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THE AMERICAN COMMONWEALTH

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BY

JAMES BRYCE,

AUTHOR OF 'THE HOLY ROMAN EMPIRE'

M.P. FOR ABERDEEN

IN THREE VOLUMES

VOL. II

THE STATE GOVERNMENTS—THE PARTY SYSTEM

London

MACMILLAN AND CO.

AND NEW YORK

1888

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PART II

THE STATE GOVERNMENTS

CHAPTER XXXVI

NATURE OF THE AMERICAN STATE

From the study of the National Government, we may go on to examine that of the several States which make up the Union. This is the part of the American political system which has received least attention both from foreign and from native writers. Finding in the Federal president, cabinet, and Congress a government superficially resembling those of their own countries, and seeing the Federal authority alone active in international relations, Europeans have forgotten and practically ignored the State Governments to which their own experience supplies few parallels, and on whose workings the intelligence published on their side of the ocean seldom throws light. Even the European traveller who makes the six or seven days' run across the American continent, from New York *via* Philadelphia and Chicago to San Francisco, though he passes in this journey of 2100 miles over the territories of eleven self-governing commonwealths, hardly notices the fact. He uses one coinage and one post-office; he is stopped by no custom-houses; he sees no officials in a state livery; he thinks no more of the difference of jurisdictions than the passenger from London to Liverpool does of the counties

traversed by the line of the North-Western Railway. So, too, our best informed English writers on the science of politics, while discussing copiously the relation of the American States to the central authority, have failed to draw on the fund of instruction which lies in the study of State Governments themselves. Mill in his *Representative Government* scarcely refers to them. Mr. Freeman in his learned essays, Sir H. Maine in his ingenious book on Popular Government, pass by phenomena which would have admirably illustrated some of their reasonings.[1]

American publicists, on the other hand, have been too much absorbed in the study of the Federal system to bestow much thought on the State governments. The latter seem to them the most simple and obvious things in the world, while the former, which has been the battle-ground of their political parties for a century, excites the keenest interest, and is indeed regarded as a sort of mystery, on which all the resources of their metaphysical subtlety and legal knowledge may well be expended. Thus while the dogmas of State sovereignty and State rights, made practical by the great struggle over slavery, have been discussed with extraordinary zeal and acumen by three generations of men, the character power and working of the States as separate self-governing bodies have received little attention or illustration. Yet they are full of interest; and he who would understand the changes that have passed on the American democracy will find far more instruction in a study of the State governments than of the Federal Constitution. The materials for this study are unfor-

[1] The first authors known to me who have in Europe insisted with adequate force on their value, are M. Boutmy of the Parisian École Libre des Sciences Politiques, and Dr. von Holst, the constitutional historian of America.

tunately, at least to a European, either inaccessible or unmanageable. They consist of constitutions, statutes, the records of the debates and proceedings of constitutional conventions and legislatures, the reports of officials and commissioners, together with that continuous transcript and picture of current public opinion which the files of newspapers supply. Of these sources only one, the constitutions, is practically available to a person writing on this side the Atlantic. To be able to use the rest one must go to the State and devote one's self there to these original authorities, correcting them, where possible, by the recollections of living men. It might have been expected that in most of the States, or at least of the older States, persons would have been found to write political, and not merely antiquarian or genealogical, State histories, describing the political career of their respective communities, and discussing the questions on which political contests have turned. But this has been done in comparatively few instances, so that the European inquirer finds a scanty measure of the assistance which he would naturally have expected from previous labourers in this field.[1] I call it a field: it is rather a primeval forest, where the vegetation is rank, and through which scarcely a trail has yet been cut. The new historical school which is growing up at the leading American universities, and has already done excellent work on the earlier history of the Eastern States, will doubtless ultimately grapple with this task; in the meantime, the difficulties I have stated must be my excuse for treating this branch of my subject with

[1] Since these lines were written, such a series of State histories has been begun under the title of *American Commonwealths*. Of the volumes that have already appeared some possess high merit; but they do not always bring the narrative down to those very recent times which are most instructive to the student of existing institutions.

a brevity out of proportion to its real interest and importance. It is better to endeavour to bring into relief a few leading features, little understood in Europe, than to attempt a detailed account which would run to inordinate length.

The American State is a peculiar organism, unlike anything in modern Europe, or in the ancient world. The only parallel is to be found in the cantons of Switzerland, the Switzerland of our own day, for until 1815, if one ought not rather to say until 1848, Switzerland was not so much a nation or a state as a league of neighbour commonwealths. But Europe, and particularly England, so persistently ignores the history of Switzerland, that most instructive patent museum of politics, apparently only because she is a small country, and because people go there to see lakes and to climb mountains, that I should perplex instead of enlightening the reader by attempting to illustrate American from Swiss phenomena.

Let me attempt to sketch the American States as separate political entities, forgetting for the moment that they are also parts of a Federation.

There are thirty-eight States in the American Union, varying in size from Texas, with an area of 265,780 square miles, to Rhode Island, with an area of 1250 square miles; and in population from New York, with 5,082,871 inhabitants, to Nevada, with 62,266.[1] That is to say, the largest State is much larger than either France or the Germanic Empire; the most populous much more populous than Sweden, or Portugal, or Denmark, while the smallest is smaller than War-

[1] The population of Nevada has declined since the census of 1880, and is now probably little over 40,000, while that of New York is now nearly 6,000,000.

wickshire or Corsica, and the least populous less populous than the parish of Clerkenwell in London (69,076), or the town of Greenock in Scotland (65,884). Considering not only these differences of size, but the differences in the density of population (which in Nevada is ·6, and in Oregon 1·8 to the square mile, while in Rhode Island it is 254·9 and in Massachusetts 221·8 to the square mile); in its character (in South Carolina the blacks are 604,332 against 391,105 whites, in Mississippi 650,291 against 479,398 whites); in its birthplace (in North Carolina the foreign-born persons are less than $\frac{1}{350}$ of the population, in California more than $\frac{1}{3}$); in the occupations of the people, in the amount of accumulated wealth, in the proportion of educated persons to the rest of the community,—it is plain that immense differences might be looked for between the aspects of politics and conduct of government in one State and in another.

Be it also remembered that the older colonies had different historical origins. Virginia and North Carolina were unlike Massachusetts and Connecticut; New York, Pennsylvania, and Maryland different from both; while in recent times the stream of European immigration has filled some States with Irishmen, others with Germans, others with Scandinavians, and has left most of the Southern States wholly untouched.

Nevertheless, the form of government is in its main outlines, and to a large extent even in its actual working, the same in all these thirty-eight republics, and the differences, instructive as they are, relate to points of secondary consequence.

The States fall naturally into five groups:—

The New England States—Massachusetts, Connecticut, Rhode Island, New Hampshire, Vermont, Maine.

The Middle States—New York, New Jersey, Pennsylvania, Delaware,[1] Maryland, Ohio, Indiana.[2]

The Southern, or old Slave States—Virginia, West Virginia (separated from Virginia during the war), North Carolina, South Carolina, Georgia, Alabama, Florida, Kentucky, Tennessee, Mississippi, Louisiana, Arkansas, Missouri, Texas.

The North-Western States—Michigan, Illinois, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, Colorado.

The Pacific States—California, Nevada, Oregon.

Each of these groups has something distinctive in the character of its inhabitants, which is reflected, though more faintly now than formerly, in the character of its government and politics.

New England is the old home of Puritanism, the traces whereof, though waning under the influence of Irish and French Canadian immigration, are by no means yet extinct. The Southern States will long retain the imprint of slavery, not merely in the presence of a host of negroes, but in the degradation of the poor white population, and in certain attributes, laudable as well as regrettable, of the ruling class. The North-West is the land of hopefulness, and consequently of bold experiments in legislation: its rural inhabitants have the honesty and the narrow-mindedness of agriculturists. The Pacific West, or rather California and Nevada, for Oregon belongs in political character to the Upper Mississippi or North-western group, tinges the

[1] Delaware and Maryland were Slave States, but did not secede, and are in many respects to be classed rather with the Middle than with the Southern group.

[2] Ohio and perhaps Indiana seem rather Middle than Western, because their affinities are now somewhat closer with New York or the East than with the newer States to the North-west, but of course no sharp line can be drawn, and most people would still call them Western.

energy and sanguine good nature of the Westerns with a speculative recklessness natural to mining communities, where great fortunes have rapidly grown and vanished, and into which elements have been suddenly swept together from every part of the world, as a Rocky Mountain rainstorm fills the bottom of a valley with sand and pebbles from all the surrounding heights.

As the dissimilarity of population and of external conditions seems to make for a diversity of constitutional and political arrangements between the States, so also does the large measure of legal independence which each of them enjoys under the Federal Constitution. No State can, as a commonwealth, politically deal with or act upon any other State. No diplomatic relations can exist nor treaties be made between States, no coercion can be exercised by one upon another. And although the government of the Union can act on a State, it rarely does act, and then only in certain strictly limited directions, which do not touch the inner political life of the commonwealth.

Let us pass on to consider the circumstances which work for uniformity among the States, and work more powerfully as time goes on.

He who looks at a map of the Union will be struck by the fact that so many of the boundary lines of the States are straight lines. Those lines tell the same tale as the geometrical plans of cities like St. Petersburg or Washington, where every street runs at the same angle to every other. The States are not natural growths. Their boundaries are for the most part not natural boundaries fixed by mountain ranges, nor even historical boundaries due to a series of events, but purely artificial boundaries, determined by an authority which

carved the national territory into strips of convenient size, as a building company lays out its suburban lots. Of the States subsequent to the original thirteen, California is the only one with a genuine natural boundary, finding it in the chain of the Sierra Nevada on the east and the Pacific ocean on the west. No one of these later States can be regarded as a naturally developed political organism. They are trees planted by the forester, not self-sown with the help of the seed-scattering wind. This absence of physical lines of demarcation has tended and must tend to prevent the growth of local distinctions. Nature herself seems to have designed the Mississippi basin, as she has designed the unbroken levels of Russia, to be the dwelling-place of one people.

Each State makes its own Constitution; that is, the people agree on their form of government for themselves, with no interference from the other States or from the Union. This form is subject to one condition only: it must be republican.[1] But in each State the people who make the constitution have lately come from other States, where they have lived under and worked constitutions which are to their eyes the natural and almost necessary model for their new State to follow; and in the absence of an inventive spirit among the citizens, it was the obvious course for the newer States to copy the organizations of the older States, especially as these agreed with certain familiar features of the Federal Constitution. Hence the outlines, and even the phrases of the elder constitutions reappear in those of the more recently formed States. The precedents set by Virginia, for instance, had much influence on Tennessee, Alabama,

[1] The case of Kansas immediately before the War of Secession, and the cases of the rebel States, which were not readmitted after the war till they had accepted the constitutional amendments forbidding slavery and protecting the freedmen, are quite exceptional cases.

Mississippi, and Florida, when they were engaged in making or amending their constitutions during the early part of this century.

Nowhere is population in such constant movement as in America. In some of the newer States only one-fourth or one-fifth of the inhabitants are natives of the United States. Many of the townsfolk, not a few even of the farmers, have been till lately citizens of some other State, and will, perhaps, soon move on farther west. These Western States are like a chain of lakes through which there flows a stream which mingles the waters of the higher with those of the lower. In such a constant flux of population local peculiarities are not readily developed, or if they have grown up when the district was still isolated, they disappear as the country becomes filled. Each State takes from its neighbours and gives to its neighbours, so that the process of assimilation is always going on over the whole wide area.

Still more important is the influence of railway communication, of newspapers, of the telegraph. A Greek city like Samos or Mitylene, holding her own island, preserved a distinctive character in spite of commercial intercourse and the sway of Athens. A Swiss canton like Uri or Appenzell, entrenched behind its mountain ramparts, remains, even now under the strengthened central government of the Swiss nation, unlike its neighbours of the lower country. But an American State traversed by great trunk lines of railway, and depending on the markets of the Atlantic cities and of Europe for the sale of its grain, cattle, bacon, and minerals, is attached by a hundred always tightening ties to other States, and touched by their weal or woe as nearly as by what befalls within its own limits. The leading newspapers are read over a vast area. The inhabitants of each

State know every morning the events of yesterday over the whole Union.

Finally the political parties are the same in all the States. The tenets (if any) of each party are the same everywhere, their methods the same, their leaders the same, although of course a prominent man enjoys especial influence in his own State. Hence, State politics are largely swayed by forces and motives external to the particular State, and common to the whole country, or to great sections of it; and the growth of local parties, the emergence of local issues and development of local political schemes, are correspondingly restrained.

These considerations explain why the States, notwithstanding the original diversities between some of them, and the wide scope for political divergence which they all enjoy under the Federal Constitution, are so much less dissimilar and less peculiar than might have been expected. European statesmen have of late years been accustomed to think of federalism and local autonomy as convenient methods either for recognizing and giving free scope to the sentiment of nationality which may exist in any part of an empire, or for meeting the need for local institutions and distinct legislation which may arise from differences between such a part and the rest of the empire. It is one or other or both of these reasons that have moved statesmen in such cases as those of Finland in her relations to Russia, Hungary in her relations to German-Austria, Iceland in her relations to Denmark, Bulgaria in her relations to the Turkish Sultan, Ireland in her relations to the United Kingdom. But the final causes, so to speak, of the recognition of the States of the American Union as autonomous commonwealths, have been different. Their self-government is not the consequence of differences

which can be made harmless to the whole body politic only by being allowed free course. It has been due primarily to the historical fact that they existed as commonwealths before the Union came into being; secondarily, to the belief that localized government is the best guarantee for civic freedom, and to a sense of the difficulty of administering a vast territory and population from one centre and by one government.

I return to indicate the points in which the legal independence and right of self-government of the several States appears. Each of the thirty-eight has its own—

Constitution (whereof more anon).

Executive, consisting of a governor, and various other officials.

Legislature of two Houses.

System of local government in counties, cities, townships, and school districts.

System of State and local taxation.

Debts, which it may (and sometimes does) repudiate at its own pleasure.

Body of private law, including the whole law of real and personal property, of contracts, of torts, and of family relations.

Courts, from which no appeal lies (except in cases touching Federal legislation or the Federal constitution) to any Federal court.

System of procedure, civil and criminal.

Citizenship, which may admit persons (*e.g.* recent immigrants) to be citizens at times, or on conditions, wholly different from those prescribed by other States.

Three points deserve to be noted as illustrating what these attributes include.

I. A man gains active citizenship of the United

States (*i.e.* a share in the government of the Union) only by becoming a citizen of some particular State. Being such citizen, he is forthwith entitled to the national franchise. That is to say, voting power in the State carries voting power in Federal elections, and however lax a State may be in its grant of such power, *e.g.* to foreigners just landed or to persons convicted of crime, these State voters will have the right of voting in congressional and presidential elections.[1] The only restriction on the States in this matter is that of the fourteenth and fifteenth Constitutional amendments, which have already been discussed. They were intended to secure equal treatment to the negroes, and incidentally they declare the protection given to all citizens of the United States.[2] Whether they really enlarge it, that is to say, whether it did not exist by implication before, is a legal question, which I need not discuss.

[1] Congress has power to pass a uniform rule of naturalization (Const. Art. i. § 8).

Under the present naturalization laws a foreigner must have resided in the United States for five years, and for one year in the State or Territory where he seeks admission to United States citizenship, and must declare two years before he is admitted that he renounces allegiance to any foreign prince or state. Naturalization makes him a citizen not only of the United States, but of the State or Territory where he is admitted, but does not necessarily confer the electoral franchise, for that depends on State laws.

In more than a third of the States the electoral franchise is now enjoyed by persons not naturalized as United States citizens.

[2] "The line of distinction between the privileges and immunities of citizens of the United States, and those of citizens of the several States, must be traced along the boundary of their respective spheres of action, and the two classes must be as different in their nature as are the functions of their respective governments. A citizen of the United States as such has a right to participate in foreign and inter-state commerce, to have the benefit of the postal laws, to make use in common with others of the navigable waters of the United States, and to pass from State to State, and into foreign countries, because over all these subjects the jurisdiction of the United States extends, and they are covered by its laws. The privileges suggest the immunities. Wherever it is the duty of the United States to give protection to a citizen against any harm, inconvenience, or deprivation, the citizen is entitled to an

II. The power of a State over all communities within its limits is absolute. It may grant or refuse local government as it pleases. The population of the city of Providence is more than one-third of that of the State of Rhode Island, the population of New York city more than one-fifth that of the State of New York. But the State might in either case extinguish the municipality, and govern the city by a single State commissioner appointed for the purpose, or leave it without any government whatever. The city would have no right of complaint to the Federal President or Congress against such a measure. Massachusetts has lately remodelled the city government of Boston just as the British Parliament might remodel that of Birmingham. Let an Englishman imagine a county council for Warwickshire suppressing the municipality of Birmingham, or a Frenchman imagine the department of the Rhone extinguishing the municipality of Lyons, with no possibility of intervention by the central authority, and he will measure the difference between the American States and the local governments of Western Europe.

immunity which pertains to Federal citizenship. One very plain immunity is exemption from any tax, burden, or imposition under State laws as a condition to the enjoyment of any right or privilege under the laws of the United States. . . . Whatever one may claim as of right under the Constitution and laws of the United States by virtue of his citizenship, is a privilege of a citizen of the United States. Whatever the Constitution and laws of the United States entitle him to exemption from, he may claim an exemption in respect to. And such a right or privilege is abridged whenever the State law interferes with any legitimate operation of Federal authority which concerns his interest, whether it be an authority actively exerted, or resting only in the express or implied command or assurance of the Federal Constitution or law. But the United States can neither grant nor secure to its citizens rights or privileges which are not expressly or by reasonable implication placed under its jurisdiction, and all not so placed are left to the exclusive protection of the States."—Cooley, *Principles*, pp. 245-247.

III. A State commands the allegiance of its citizens, and may punish them for treason against it. The power has rarely been exercised, but its undoubted legal existence had much to do with inducing the citizens of the Southern States to follow their governments into secession in 1861. They conceived themselves to owe allegiance to the State as well as to the Union, and when it became impossible to preserve both, because the State had declared its secession from the Union, they might hold the earlier and nearer authority to be paramount. Allegiance to the State must now, since the war, be taken to be subordinate to allegiance to the Union. But allegiance to the State still exists; treason against the State is still possible. One cannot think of treason against Warwickshire or the department of the Rhone.

These are illustrations of the doctrine which Europeans often fail to grasp, that the American States were originally in a certain sense, and still for certain purposes remain, sovereign States. Each of the original thirteen became sovereign when it revolted from the mother country in 1776. By entering the Confederation of 1781-88 it parted with one or two of the attributes of sovereignty, by accepting the Federal Constitution in 1788 it subjected itself for certain specified purposes to a central government, but claimed to retain its sovereignty for all other purposes. That is to say, the authority of a State is an inherent, not a delegated, authority. It has all the powers which any independent government can have, except such as it can be affirmatively shown to have stripped itself of, while the Federal Government has only such powers as it can be affirmatively shown to have received. To use the legal expression, the presumption is always for a State, and the burden

of proof lies upon any one who denies its authority in a particular matter.[1]

What State sovereignty means and includes is a question which incessantly engaged the most active legal and political minds of the nation, from 1789 down to 1870. Some thought it paramount to the rights of the Union. Some considered it as held in suspense by the Constitution, but capable of reviving as soon as a State should desire to separate from the Union. Some maintained that each State had in accepting the Constitution finally renounced its sovereignty, which thereafter existed only in the sense of such an undefined domestic legislative and administrative authority as had not been conferred upon Congress. The conflict of these views, which became acute in 1830 when South Carolina claimed the right of nullification, produced Secession and the war of 1861-65. Since the defeat of the Secessionists, the last of these views may be deemed to have been established, and the term "State sovereignty" is now but seldom heard. Even "States rights" have a different meaning from that which they had thirty years ago.[2]

[1] It may of course be said that as the colonies associated themselves into a league, at the very time at which they revolted from the British Crown, and as their foreign relations were always managed by the authority and organs of this league, no one of them ever was for international purposes a free and independent sovereign State. This is true, and Abraham Lincoln was in this sense justified in saying that the Union was older than the States. But what are we to say of North Carolina and Rhode Island, after the acceptance of the Constitution of 1787-89 by the other eleven States? They were out of the old Confederation, for it had expired. They were not in the new Union, for they refused during many months to enter it. What else can they have been during those months except sovereign commonwealths?

[2] States Rights was a watchword in the South for many years. In 1851 there was a student at Harvard College from South Carolina who bore the name of States Rights Gist, baptized, so to speak, into Calhounism. He rose to be a brigadier-general in the Confederate army, and fell in the Civil War.

A European who now looks calmly back on this tremendous controversy of tongue, pen, and sword, will be apt to express his ideas of it in the following way. He will remark that much of the obscurity and perplexity arose from confounding the sovereignty of the American nation with the sovereignty of the Federal Government.[1] The Federal Government clearly was sovereign only for certain purposes, *i.e.* only in so far as it had received specified powers from the Constitution. These powers did not, and in a strict legal construction do not now, abrogate the supremacy of the States. A State still possesses one important attribute of sovereignty—immunity from being sued except by another State. But the American nation which had made the Constitution, had done so in respect of its own sovereignty, and might well be deemed to retain that sovereignty as paramount to any rights of the States. The feeling of this ultimate supremacy of the nation was what swayed the minds of those who resisted Secession, just as the equally well-grounded persuasion of the limited character of the central Federal Government satisfied the conscience of the seceding South.

The Constitution of 1789 was a compromise, and a compromise arrived at by allowing contradictory propositions to be represented as both true. It has been compared to the declarations made with so much energy and precision of language in the ancient hymn *Quicunque Vult*, where, however, the apparent contradiction has always been held to seem a contradiction only because the human intellect is unequal to the comprehension of such profound mysteries. To every one who urged that there were thirteen States, and therefore thirteen

[1] Of course I do not mean that lawyers fell into this confusion, but that it affected the view of the world at large.

governments, it was answered, and truly, that there was one government, because the people were one. To every one who declared that there was one government, it was answered with no less truth that there were thirteen. Thus counsel was darkened by words without knowledge; the question went off into metaphysics, and found no end, in wandering mazes lost.

There was, in fact, a divergence between the technical and the practical aspects of the question. Technically, the seceding States had an arguable case; and if the point had been one to be decided on the construction of the Constitution as a court decides on the construction of a commercial contract, they were possibly entitled to judgment. Practically, the defenders of the Union stood on firmer ground, because circumstances had changed since 1789 so as to make the nation more completely one nation than it then was, and had so involved the fortunes of the majority which held to the Union with those of the minority seeking to depart that the majority might feel justified in forbidding their departure. Stripped of legal technicalities, the dispute resolved itself into the problem often proposed but capable of no general solution: When is a majority entitled to use force for the sake of retaining a minority in the same political body with itself? To this question, when it appears in a concrete shape, as to the similar question when an insurrection is justifiable, an answer can seldom be given beforehand. The result decides. When treason prospers, none dare call it treason.

The Constitution, which had rendered many services to the American people, did them an inevitable dis-service when it fixed their minds on the legal aspects of the question. Law was meant to be the servant of

politics, and must not be suffered to become the master. A case had arisen which its formulæ were unfit to deal with, a case which had to be settled on large moral and historical grounds. It was not merely the superior physical force of the North that prevailed; it was the moral forces which rule the world, forces which had long worked against slavery, and were ordained to save North America from the curse of hostile nations established side by side.

The word "sovereignty," which has in many ways clouded the domain of public law and jurisprudence, confused men's minds by making them assume that there must in every country exist, and be discoverable by legal inquiry, either one body invested legally with supreme power over all minor bodies, or several bodies which, though they had consented to form part of a larger body, were each in the last resort independent of it, and responsible to none but themselves.[1] They forgot that a Constitution may not have determined where legal supremacy shall dwell. Where the Constitution of the United States placed it was at any rate doubtful, so doubtful that it would have been better to drop technicalities, and recognize the broad fact that the legal claims of the States had become incompatible with the historical as well as legal claims of the nation. In the uncertainty as to where legal right resided, it would have been prudent to consider where physical force

[1] A further confusion arises from the fact that men are apt in talking of sovereignty to mix up legal supremacy with practical predominance. They ought to go together, and law seeks to make them go together. But it may happen that the person or body in whom law vests supreme authority is unable to enforce that authority: so the legal sovereign and the actual sovereign—that is to say, the force which will prevail in physical conflict—are different. There is always a strongest force; but the force recognized by law may not be really the strongest; and of several forces it may be impossible to tell, till they have come into actual physical conflict, which is the strongest.

resided. The South however thought herself able to resist any physical force which the rest of the nation might bring against her. Thus encouraged, she took her stand on the doctrine of States Rights: and then followed a pouring out of blood and treasure such as was never spent on determining a point of law before, not even when Edward III. and his successors waged war for a hundred years to establish the claim of females to inherit the crown of France.

What, then, do the rights of a State now include? Every right or power of a Government except:—

The right of secession (not abrogated in terms, but admitted since the war to be no longer claimable. It is expressly negatived in the recent Constitutions of several Southern States).

Powers which the Constitution withholds from the States (including that of intercourse with foreign governments).

Powers which the Constitution expressly confers on the Federal Government.

As respects some powers of the last class, however, the States may act concurrently with, or in default of action by, the Federal Government. It is only from contravention of its action that they must abstain. And where contravention is alleged to exist, whether legislative or executive, it is by a court of law, and, in case the decision is in the first instance favourable to the pretensions of the State, ultimately by a Federal court, that the question falls to be decided.[1]

A reference to the preceding list of what each State may create in the way of distinct institutions will show that these rights practically cover nearly all the ordinary relations of citizens to one another and

[1] See Chapter XXII. in Vol. I.

to their Government.[1] An American may, through a long life, never be reminded of the Federal Government, except when he votes at presidential and congressional elections, lodges a complaint against the post-office, and opens his trunks for a custom-house officer on the pier at New York when he returns from a tour in Europe. His direct taxes are paid to officials acting under State laws. The State, or a local authority constituted by State statutes, registers his birth, appoints his guardian, pays for his schooling, gives him a share in the estate of his father deceased, licenses him when he enters a trade (if it be one needing a licence), marries him, divorces him, entertains civil actions against him, declares him a bankrupt, hangs him for murder. The police that guard his house, the local boards which look after the poor, control highways, impose water rates, manage schools—all these derive their legal powers from his State alone. Looking at this immense compass of State functions, Jefferson would seem to have been not far wrong when he said that the Federal government was nothing more than the American department of foreign affairs. But although the National government touches the direct interests of the citizen less than does the State government, it touches his sentiment more. Hence the strength of his attachment to the former and his interest in it must not be measured by the frequency of his dealings with it. In the partitionment of governmental functions between nation and State, the State gets the most but the nation the highest, so the balance between the two is preserved.

[1] A recent American writer well observes that nearly all the great questions which have agitated England during the last sixty years would, had they arisen in America, have fallen within the sphere of State legislation. — Jameson, "Introduction to the Constitutional and Political History of the States," in *Johns Hopkins University Studies.*

Thus every American citizen lives in a duality of which Europeans, always excepting the Swiss, and to some extent the Germans, have no experience. He lives under two governments and two sets of laws; he is animated by two patriotisms and owes two allegiances. That these should both be strong and rarely be in conflict is most fortunate. It is the result of skilful adjustment and long habit, of the fact that those whose votes control the two sets of governments are the same persons, but above all of that harmony of each set of institutions with the other set, a harmony due to the identity of the principles whereon both are founded, which makes each appear necessary to the stability of the other, the States to the nation as its basis, the National Government to the States as their protector.

CHAPTER XXXVII

STATE CONSTITUTIONS

THE government of each of the thirty-eight States is determined by and set forth in its Constitution, a comprehensive fundamental law, or rather group of laws included in one instrument, which has been directly enacted by the people of the State, and is capable of being repealed or altered, not by their representatives, but by themselves alone. As the Constitution of the United States stands above Congress and out of its reach, so the Constitution of each State stands above the legislature of that State, cannot be varied in any particular by Acts of the State legislature, and involves the invalidity of any statute passed by the legislature which a court of law may find to be inconsistent with it.

The State Constitutions are the oldest things in the political history of America, for they are the continuations and representatives of the royal colonial charters, whereby the earliest English settlements in America were created, and under which their several local governments were established, subject to the authority of the English Crown and ultimately of the British Parliament. But, like most of the institutions under which English-speaking peoples now live, they have a pedigree

which goes back to a time anterior to the discovery of America itself. It begins with the English Trade Guild of the middle ages, itself the child of still more ancient corporations, dating back to the days of imperial Rome, and formed under her imperishable law. Charters were granted to merchant guilds in England as far back as the days of King Henry I. Edward IV. gave an elaborate one to the Merchant Adventurers trading with Flanders in 1463.[1] In it we may already discern the arrangements which are more fully set forth in two later charters of greater historical interest, the charter of Queen Elizabeth to the East India Company in 1599, and the charter of Charles I. to the "Governor and Company of the Mattachusetts Bay in Newe-England" in 1628. Both these instruments establish and incorporate trading companies, with power to implead and be impleaded, to use a common seal, to possess and acquire lands tenements and hereditaments, with provisions for the making of ordinances for the welfare of the company. The Massachusetts Charter creates a frame of government consisting of a governor, deputy-governor, and eighteen assistants (the term still in use in many of the London city guilds), and directs them to hold four times a year a general meeting of the company, to be called the "greate and generall Court," in which general court "the Governor or deputie Governor, and such of the assistants and Freemen of the Company as shall be present, shall have full power and authority to choose other persons to be free of the Company, and to elect and constitute such officers as they shall thinke fitt for managing the affaires of the saide Governor and Company, and to make Lawes and

[1] See upon this subject an interesting article by Mr. Brooks Adams in the *Atlantic Monthly* magazine for November 1884.

Ordinances for the Good and Welfare of the saide Company, and for the Government and Ordering of the saide Landes and Plantasion, and the People inhabiting and to inhabite the same, soe as such Lawes and Ordinances be not contrary or repugnant to the Lawes and Statuts of this our realme of England." In 1691, the charter of 1628 having been declared forfeited in 1684, a new one was granted by King William and Queen Mary, and this instrument, while it retains much of the language and some of the character of the trade guild charter, is really a political frame of government for a colony. The assistants receive the additional title of councillors; their number is raised to twenty-eight; they are to be chosen by the general court, and the general court itself is to consist, together with the governor and assistants, of freeholders elected by towns or places within the colony, the electors being persons with a forty shilling freehold or other property worth £40. The governor is directed to appoint judges, commissioners of oyer and terminer, etc.; the general court receives power to establish judicatories and courts of record, to pass laws (being not repugnant to the laws of England), and to provide for all necessary civil offices. An appeal from the courts shall always be to the King in his privy council. This is a true political Constitution.[1] Under it the colony was governed, and in the main well and wisely governed, till 1780. Much of it, not merely its terms, such as the name General Court, but its solid framework, was transferred bodily to the Massachusetts

[1] The oldest truly political Constitution in America is the instrument called the Fundamental Orders of Connecticut, framed by the inhabitants of Windsor, Hartford, and Wethersfield in 1638, memorable year, when the ecclesiastical revolt of Scotland saved the liberties of England. Connecticut was afterwards regularized by Charles II.'s charter of 1662 to "the Governor and Company of the English colony of Connecticut."

Constitution of 1780, which is now in force, and which profoundly influenced the Convention that prepared the Federal Constitution in 1787. Yet the charter of 1691 is nothing but an extension and development of the trading charter of 1628, in which there already appears, as there had appeared in Edward IV.'s charter of 1463,[1] and in the East India Company's charter of 1599, the provision that the power of law-giving, otherwise unlimited, should be restricted by the terms of the charter itself, which required that every law for the colony should be agreeable to the laws of England. We have therefore in the three charters which I have named, those of 1463, 1599, and 1628, as well as in that of 1691, the essential and capital characteristic of a rigid or supreme Constitution—viz. a frame of government established by a superior authority, creating a subordinate law-making body, which can do everything except violate the terms and transcend the powers of the instrument to which it owes its own existence. So long as the colony remained under the British Crown, the superior authority, which could amend or remake the frame of government, was the British Crown or Parliament. When the connection with Britain was severed, that authority passed over, not to the State legislature, which remained limited, as it always had been, but to the people of the now independent commonwealth, whose will speaks through what is now the State Constitution, just as the will of the Crown or of Parliament had spoken through the charters of 1628 and 1691.

I have taken the case of Massachusetts as the best example of the way in which the trading Company grows into a colony, and the colony into a State. But some

[1] The charter to the Flanders Company of 1463 forbids the making of any law contrary to the intent of the charter, and provides that any such law shall be null.

of the other colonies furnish illustrations scarcely less apposite. The oldest of them all, the acorn whence the oak of English dominion in America has sprung, the colony of Virginia, was, by the second charter, of 1609, established under the title of "The Treasurer and Company of Adventurers and Planters of the City of London for the first colony in Virginia."[1]

Within the period of ten years, under the last of the Tudors and the first of the Stuarts, two trading charters were issued to two Companies of English adventurers. One of these charters is the root of English title to the East and the other to the West. One of these Companies has grown into the Empire of India; the other into the United States of North America. If England had done nothing else in history, she might trust for her fame to the work which these charters began. And the foundations of both dominions were laid in the age which was adorned by the greatest of all her creative minds, and gave birth to the men who set on a solid basis a frame of representative government which all the free nations of the modern world have copied.

When, in 1776, the thirteen colonies threw off their allegiance to King George III., and declared themselves independent States, the colonial charter naturally became the State Constitution.[2] In most cases it was

[1] The phrase First colony distinguishes what afterwards became the State of Virginia from the more northerly parts of Virginia, afterwards called New England. The Second colony was to be Plymouth, one of the two settlements which became Massachusetts.

[2] Even in declaring herself independent, New Jersey clung to the hope that the mother country would return to wiser counsels, and avert the departure of her children. She added at the end of her Constitution of 2d July 1776 the following proviso—"Provided always, and it is the true intent and meaning of this Congress, that if a reconciliation between Great Britain and these colonies should take place, and the latter be taken again under the protection and government of the Crown of Britain, this charter shall be null and void, otherwise remain firm and inviolable." The truth is that the colonists, till alienated by the behaviour of England,

remodelled, with large alterations, by the revolting colony. But in three States it was maintained unchanged, except, of course, so far as Crown authority was concerned, viz. in Massachusetts till 1780, in Connecticut till 1818, and in Rhode Island till 1842.[1] The other twenty-five States admitted to the Union in addition to the original thirteen, have all entered it as organized self-governing communities, with their Constitutions already made by their respective peoples. Each Act of Congress which admits a new State admits it as a subsisting commonwealth, recognizing rather than affecting to sanction its Constitution. Congress may impose conditions which the State Constitution must fulfil. But the authority of the State Constitutions does not flow from Congress, but from acceptance by the citizens of the States for which they are made. Of these instruments, therefore, no less than of the Constitutions of the thirteen original States, we may say that although subsequent in date to the Federal Constitution,

had far more kindly feelings towards her than she had towards them. To them she was the old home, to her they were simply customers. Some interesting illustrations of the views then entertained as to the use of colonies may be found in the famous discussion in the fourth book of Adam Smith's *Wealth of Nations*, which appeared in 1776.

[1] Rhode Island simply passed a statute by her legislature in May 1776, substituting allegiance to the colony for allegiance to the King. Connecticut passed the following statute:—"Be it enacted by the Governor and Council and House of Representatives, in general court assembled, that the ancient form of civil government contained in the charter from Charles II., King of England, and adopted by the people of this State, shall be and remain the civil Constitution of this State, under the sole authority of the people thereof, independent of any king or prince whatever; and that this republic is, and shall for ever be and remain, a free, sovereign, and independent State, by the name of the State of Connecticut." (Three paragraphs follow containing a short "Bill of Rights," and securing to the inhabitants of any other of the United States the same law and justice as natives of the State enjoyed.) This is all that Connecticut thought necessary. She had possessed, as did Rhode Island also, the right of appointing her own governor, and therefore did not need to substitute any new authority for a royal governor.

they are, so far as each State is concerned, *de jure* prior to it. Their authority over their own citizens is nowise derived from it.[1] Nor is this a mere piece of technical law. The antiquity of the older States as separate commonwealths, running back into the heroic ages of the first colonization of America and the days of the Revolutionary War, is a potent source of the local patriotism of their inhabitants, and gives these States a sense of historic growth and indwelling corporate life which they could not have possessed had they been the mere creatures of the Federal Government.

The State Constitutions of America well deserve to be compared with those of the self-governing British colonies. But one remarkable difference must be noted here. The constitutions of British colonies have all proceeded from the Imperial Parliament of the United Kingdom, which retains its full legal power of legislating for every part of the British dominions. In many cases a colonial constitution provides that it may be itself altered by the colonial legislature, of course with the assent of the Crown; but inasmuch as in its origin it is a statutory constitution, not self-grown, but planted as a shoot by the Imperial Parliament at home, Parliament

[1] Of course in practice it is possible for Congress to influence the character of a State Constitution, because a State whose Constitution contains provisions which Congress disapproves may be refused admission. But since the extinction of slavery and completion of the process of reconstruction, occasions for the exercise of such a power rarely arise. It was used to compel the seceding States to modify their Constitutions so as to get rid of all taint of slavery before their senators and representatives were readmitted to Congress after the war. Of course Congress is not bound to admit a community desiring to be recognized as a State. Utah has been kept knocking at the door of the Union for many years, because the majority of her inhabitants lie under suspicion, and the nation wishes to retain for the purpose of preventing polygamy that full control which can be exercised over a Territory but not over a State. And sometimes a dominant party postpones the admission of a State likely to strengthen by its vote the opposite party.

may always alter or abolish it. Congress, on the other hand, has no power to alter a State constitution. And whatever power of alteration has been granted to a British colony is exercisable by the legislature of the colony, not, as in America, by the citizens at large.

The original Constitutions of the States, whether of the old thirteen or of the newer twenty-five, have been in nearly every case subsequently recast, in some instances five, six, or even seven times, as well as amended in particular points. Thus Constitutions of all dates are now in force in different States, from that of Massachusetts, enacted in 1780, but largely amended since, to that of Florida enacted in 1886.

Every existing Constitution is the work of the people, not of the legislature of the State. The Constitutions of the revolutionary period were in a few instances enacted by the State legislature, acting as a body with plenary powers, but more usually by the people acting through a Convention, *i.e.* a body especially chosen by the voters at large for the purpose, and invested with full powers, not only of drafting, but of adopting the instrument of government.[1] But since 1792, when Kentucky framed her Constitution, the invariable practice has been for the Convention, elected by the voters, to submit, in accordance with the pre-

[1] In Rhode Island and Connecticut, as already stated, the legislature continued the colonial Constitution as a State Constitution. In South Carolina a body calling itself the "Provincial Congress" claimed to be the "General Assembly," or legislature of the colony, and as such enacted the Constitution. In the other revolting colonies, except Massachusetts, Conventions or Congresses enacted the Constitution on behalf of the people, not submitting it to the voters for ratification. In Massachusetts the Convention submitted its draft to the voters in 1780, and the voters adopted it, a previous draft submitted by the legislature in 1778 having been rejected. In no State would the idea of allowing a Convention to enact a constitution as a sovereign body be now entertained.—See Judge Jameson's valuable book *The Constitutional Convention.*

cedent set by Massachusetts in 1780, the draft Constitution framed by it to the citizens of the State at large, who vote upon it Yes or No. They usually vote on it as a whole, and adopt or reject it *en bloc*, but sometimes provision is made for voting separately on some particular point or points.

The people of a State retain for ever in their hands, altogether independent of the National government, the power of altering their Constitution. When a new Constitution is to be prepared, or the existing one amended, the initiative usually comes from the legislature, which (either by a simple majority, or by a two-thirds majority, or by a majority in two successive legislatures, as the Constitution may in each instance provide) submits the matter to the voters in one of two ways. It may either propose to the people certain specific amendments,[1] or it may ask the people to decide by a direct popular vote on the propriety of calling a constitutional Convention to revise the whole existing Constitution. In the former case the amendments suggested by the legislature are directly voted on by the citizens; in the latter the legislature, so soon as the citizens have voted for the holding of a convention, provides for the election by the people of this convention. When elected, the Convention meets, sets to work, goes through the old Constitution, and prepares a new one, which is then presented to the people for ratification or rejection at the polls. Only in the little State of Delaware is the function of amending the Constitution still left to the legislature without the subsequent ratification of a popular vote, subject, however, to the pro-

[1] In Kentucky and New Hampshire the legislature has no power to propose amendments. In some States it can do so only after stated intervals, *e.g.* of five years.

vision that changes must be passed by two successive legislatures, and must have been put before the people at the election of members for the second. Some States provide for the submission to the people at fixed intervals, of seven, ten, sixteen, or twenty years, of the propriety of calling a convention to revise the Constitution, so as to secure that the attention of the people shall be drawn to the question whether their scheme of government ought or ought not to be changed. Be it observed, however, that whereas the Federal Constitution can be amended only by a vote of three-fourths of the States, a Constitution can in nearly every State be changed by a bare majority of the citizens voting at the polls.[1] Hence we may expect, and shall find, that these instruments are altered more frequently and materially than the Federal Constitution has been.

A State Constitution is not only independent of the central national government (save in certain points already specified), it is also the fundamental organic law of the State itself. The State exists as a commonwealth by virtue of its Constitution, and all State authorities, legislative, executive, and judicial, are the creatures of, and subject to, the State Constitution.[2]

[1] Sometimes, however, an absolute majority of all the qualified voters is required. In Rhode Island (where the voting is in town and ward meetings) a three-fifths majority is needed, and in South Carolina the ratification of the next elected legislature by a two-thirds majority in each House is necessary. In Kentucky and Delaware the proposal to call a convention must be approved by a majority of all the voters. Delaware having during several years failed in the attempt to amend her Constitution (of 1831) by the legislature, fell back, in 1887, on the proposal to hold a constitutional convention, but could not secure a sufficiently large vote.

[2] Some details as to the provisions of State Constitutions, and observations on a few of them, may be found in the following works :—Stimson's *American Statute Law*, Hitchcock's *American State Constitutions* (in Messrs. Putnam's "Useful Questions of the Day" Series) ; Davis's "American Constitutions," in *Johns Hopkins University Studies;* and the article "States" in the *American Cyclopædia of Political Science.* Of course the great

Just as the President and Congress are placed beneath the Federal Constitution, so the Governor and Houses of a State are subject to its Constitution, and any act of theirs done either in contravention of its provisions, or in excess of the powers it confers on them, is absolutely void. All that has been said in preceding chapters regarding the functions of the courts of law where an Act of Congress is alleged to be inconsistent with the Federal Constitution, applies equally where a statute passed by a State legislature is alleged to transgress the Constitution of the State, and of course such validity may be contested in any court, whether a State court or a Federal court, because the question is an ordinary question of law, and is to be solved by determining whether or no a law of inferior authority is inconsistent with a law of superior authority. Whenever in any legal proceeding before any tribunal, either party relies on a State statute, and the other party alleges that this statute is *ultra vires* of the State legislature, and therefore void, the tribunal must determine the question just as it would determine whether a bye-law made by a municipal council or a railway company was in excess of the law-making power which the muncipality or the company had received from the higher authority which incorporated it and gave it such legislative power as it possesses. But although Federal courts are fully competent to entertain a question arising on the con-

authority is the collection of the State Constitutions, embracing all that have been duly enacted since 1776, in the two thick quarto volumes entitled *Federal and State Constitutions*, published under the authority of Congress by Ben. Perley Poore, 2 vols., Washington, 1878. It is much to be wished that an annual or biennial supplement to Poore's collection should be officially published, containing all the new constitutions and constitutional amendments. At present it is very difficult, especially for a resident in Europe, to ascertain exactly how the constitution of each State stands ; and I ask indulgence for any errors into which I may, owing to this difficulty, have fallen.

struction of a State Constitution, their practice is to follow the precedents set by any decision of a court of the State in question, just as they would follow the decision of an English court in determining a point of purely English law. They hold not only that each State must be assumed to know its own law better than a stranger can, but also that the supreme court of a State is the authorized exponent of the mind of the people who enacted its Constitution.

A State Constitution is really nothing but a law made directly by the people voting at the polls upon a draft submitted to them. The people of a State when they so vote act as a primary and constituent assembly, just as if they were all summoned to meet in one place like the folkmoots of our Teutonic forefathers. It is only their numbers that prevent them from so meeting in one place, and oblige the vote to be taken at a variety of polling places. Hence the enactment of a Constitution is an exercise of direct popular sovereignty to which we find few parallels in modern Europe, though it was familiar enough to the republics of antiquity, and has lasted till now in some of the cantons of Switzerland.[1]

The importance of this character of a State Constitution as a popularly-enacted law, overriding every minor State law, becomes all the greater when the contents of these Constitutions are examined. Europeans conceive of a constitution as an instrument, usually a short instrument, which creates a frame of government, defines its departments and powers, and declares the

[1] See the interesting remarks on the Swiss Landesgemeinde in Mr. Freeman's *Comparative Politics*. Nowadays, however, the Landesgemeinde (which survive only in Uri, Unterwalden, Glarus, and Appenzell) do not act as constituent or constitution-enacting bodies, though they still directly legislate.

"primordial rights" of the subject or citizen as against the rulers. An American State Constitution does this, but does more; and in most cases, infinitely more. It deals with a variety of topics which in Europe would be left to the ordinary action of the legislature, or of administrative authorities; and it pursues these topics into a minute detail hardly to be looked for in a fundamental instrument. Some of these details will be mentioned presently. Meantime I will sketch in outline the frame and contents of the more recent constitutions, reserving for next chapter remarks on the differences of type between those of the older and those of the newer States.

A normal Constitution consists of five parts:—

I. The definition of the boundaries of the State. (This does not occur in the case of the older States.)

II. The so-called Bill of Rights—an enumeration (whereof more anon) of the citizens' primordial rights to liberty of person and security of property. This usually stands at the beginning of the Constitution, but occasionally at the end.

III. The frame of government—*i.e.* the names functions and powers of the executive officers, the legislative bodies, and the courts of justice. This occupies several articles.

IV. Miscellaneous provisions relating to administration and law, including articles treating of schools, of the militia, of taxation and revenue, of the public debts, of local government, of State prisons and hospitals, of agriculture, of labour, of impeachment, and of the method of amending the Constitution, besides other matters, to be mentioned presently, still less political in their character. The order in which these occur differs in different instruments, and there are some in which

some of the above topics are not mentioned at all. The more recent Constitutions and those of the newer States are much fuller on these points.

V. The Schedule, which contains provisions relating to the method of submitting the Constitution to the vote of the people, and arrangements for the transition from the previous Constitution to the new one which is to be enacted by that vote. Being of a temporary nature, the schedule is not strictly a part of the Constitution.

The Bill of Rights is historically the most interesting part of these Constitutions, for it is the legitimate child and representative of Magna Charta, and of those other declarations and enactments, down to the Bill of Rights of the Act of 1 William and Mary, session 2, by which the liberties of Englishmen have been secured. Most of the thirteen colonies when they asserted their independence and framed their Constitutions inserted a declaration of the fundamental rights of the people, and the example then set has been followed by the newer States, and, indeed, by the States generally in their most recent Constitutions. Considering that all danger from the exercise of despotic power upon the people of the States by the executive has long since vanished, their executive authorities being the creatures of popular vote and nowadays rather too weak than too strong, it may excite surprise that these assertions of the rights and immunities of the individual citizen as against the government should continue to be repeated in the instruments of to-day. A reason may be found in the remarkable constitutional conservatism of the Americans, and in their fondness for the enunciation of the general maxims of political freedom. But it is also argued that these declarations of principle have a practical value, as asserting the rights of individuals and of minorities

against arbitrary conduct by a majority in the legislature, which might, in the absence of such provisions, be tempted at moments of excitement to suspend the ordinary law and arm the magistrates with excessive powers. They are therefore, it is held, still safeguards against tyranny; and they serve the purpose of solemnly reminding a State legislature and its officers of those fundamental principles which they ought never to overstep.[1] Although such provisions certainly do restrain a State legislature in ways which the British Parliament would find inconvenient, few complaints of practical evils thence arising are heard.

A general notion of these Bills of Rights may be gathered from the Constitution of the State of California (1879), printed in the Appendix to this volume. I may mention, in addition, a few curious provisions which occur in some of them.

All provide for full freedom of religious opinion and worship, and for the equality before the law of all religious denominations and their members; and many forbid the establishment of any particular church or sect, and declare that no public money ought to be applied in aid of any religious body or sectarian institution. But Delaware holds it to be "the duty of all men frequently to assemble for public worship;" and Vermont adds that "every sect or denomination of Christians ought to observe the Sabbath or Lord's Day." And thirteen States declare that the provisions for freedom of conscience are not to be taken to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State.[2]

[1] The influence of the Declaration of Independence of 1776 is of course perceptible in them all.

[2] In Arkansas, Maryland, Mississippi, North Carolina, South Carolina, and Texas, a man is declared ineligible for office if he denies the existence

Louisiana (Constitution of 1879) declares that "all government of right originates with the people, is founded on their will alone, and is instituted solely for the good of the whole, deriving its just powers from the consent of the governed. Its only legitimate end is to protect the citizen in the enjoyment of life, liberty, and property. When it assumes other functions, it is usurpation and oppression."

Twenty-six States declare that "all men have a natural, inherent, and inalienable right to enjoy and defend life and liberty;" and all of these, except the melancholy Missouri, add, the "natural right to pursue happiness."

Eighteen declare that all men have "a natural right to acquire, possess, and protect property."

Mississippi (Constitution of 1868) provides that "the right of all citizens to travel upon public conveyances shall not be infringed upon nor in any manner abridged." A similar provision occurs in the Constitution of Louisiana of 1868.[1]

Kentucky (Constitution of 1850, which is still in force) lays down "that absolute arbitrary power over the lives, liberty, and property of freemen exists nowhere in a republic, not even in the largest majority. The right of property is before and higher than any constitutional sanction; and the right of the owner of a slave to such slave and its increase is the same and as inviolable as the right of the owner of any property whatever.[2] All power is inherent in the

of God; in Pennsylvania and Tennessee he is ineligible if he does not believe in God, and in the existence of future rewards and punishments. In Arkansas and Maryland such a person is also incompetent as a witness or juror.

[1] These provisions were inserted shortly after the Civil War in order to protect the negroes.

[2] This proposition has of course been annulled, in effect, by the latest amendments (xiii. xiv. xv.) to the Federal Constitution.

people, and all free governments are founded on their authority, and instituted for their peace, safety, happiness, and security, and the protection of property."

All in one form or another secure the freedom of writing and speaking opinions; and some add that the truth of a libel may be given in evidence.

Nearly all secure the freedom of public meeting and petition. Considering that these are the last rights likely to be infringed by a State government, it is odd to find Florida in her Constitution of 1886 providing that "the people shall have the right to assemble together to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances."

Many provide that no *ex post facto* law, nor law impairing the obligation of a contract, shall be passed by the State legislature; and that private property shall not be taken by the State without just compensation.

Many forbid the creation of any title of nobility.

Many declare that the right of citizens to bear arms shall never be denied, a provision which might be expected to prove inconvenient where it was desired to check the habit of carrying revolvers. Tennessee therefore (Constitution of 1870) prudently adds that "the legislature shall have power to regulate the wearing of arms, with a view to prevent crime." So also Texas, where such a provision is certainly not superfluous. And five others[1] allow the legislature to forbid the carrying of concealed weapons.

Some declare that the estates of suicides shall descend in the ordinary course of law.

[1] North Carolina, Kentucky, Missouri, Louisiana, and Colorado, all States in which daily experience shows that the action of the legislature has not proved successful.

Most provide that conviction for treason shall not work corruption of blood nor forfeiture of estate.

Seven forbid white and coloured children to be taught in the same public schools.

Many declare the right of trial by jury to be inviolate, even while permitting the parties to waive it.

Some forbid imprisonment for debt, except in case of fraud, and secure the acceptance of reasonable bail, except for the gravest charges.

Several declare that "perpetuities and monopolies are contrary to the genius of a free State, and ought not to be allowed."

Some declare that aliens or foreigners shall have the same rights of holding property as citizens.

Many forbid the granting of any hereditary honours, privileges, or emoluments.

North Carolina declares that "as political rights and privileges are not dependent upon or modified by property, therefore no property qualification ought to affect the right to vote or hold office;" and also, "secret political societies are dangerous to the liberties of a free people, and should not be tolerated."

Massachusetts sets forth, as befits a Puritan State, high moral views: "A frequent recurrence to the fundamental principles of the Constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty and to maintain a free government. The people ought consequently to have a particular attention to all those principles in the choice of their officers and representatives, and they have a right to require of their law-givers and magistrates an exact and constant observance of them."

New York (Constitution of 1846) provides: "All

lands within this State are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates."

Maryland (Constitution of 1867) declares that "a long continuance in the executive departments of power or trust is dangerous to liberty; a rotation, therefore, in those departments is one of the best securities of permanent freedom." She also pronounces all gifts for any religious purpose (except of a piece of land not exceeding five acres for a place of worship, parsonage, or burying-ground) to be void unless sanctioned by the legislature.

These instances, a few out of many, may suffice to show how remote from the common idea of a Bill of Rights, are some of the enactments which find a place under that heading. The constitution makers seem to have inserted here such doctrines or legal reforms as seemed to them matters of high import or of wide application, especially when they could find no suitable place for them elsewhere in the instrument.

Of the articles of each State Constitution which contain the frame of State government it will be more convenient to speak in the chapters which describe the mechanism and character of the governments and administrative systems of the several States. I pass on therefore to what have been classed as the Miscellaneous Provisions. These are of great interest as revealing the spirit and tendencies of popular government in America, the economic and social condition of the country, the mischiefs that have arisen, the remedies applied to these mischiefs, the ideas and beliefs of the people in matters of legislation.

Among such provisions we find a great deal of matter which is in no distinctive sense constitutional

law, but general law, *e.g.* administrative law, the law of judicial procedure, the ordinary private law of family, inheritance, contract, and so forth; matter therefore which seems out of place in a constitution because fit to be dealt with in ordinary statutes. We find minute provisions regarding the management and liabilities of banking companies, of railways, or of corporations generally; regulations as to the salaries of officials, the quorum of courts sitting in banco, the length of time for appealing, the method of changing the venue, the publication of judicial reports; detailed arrangements for school boards and school taxation (with rules regarding the separation of white and black children in schools), for a department of agriculture, a canal board, or a labour bureau; we find a prohibition of lotteries, of bribery, of the granting of liquor licences, of usurious interest on money, an abolition of the distinction between sealed and unsealed instruments, a declaration of the extent of a mechanic's lien for work done. We even find the method prescribed in which stationery and coals for the use of the legislature shall be contracted for, and provisions for fixing the rates which may be charged for the storage of corn in warehouses. The framers of these more recent constitutions have in fact neither wished nor cared to draw a line of distinction between what is proper for a constitution and what ought to be left to be dealt with by the State legislature. And, in the case of three-fourths at least of the States, no such distinction now, in fact, exists.

How is this confusion to be explained? Four reasons may be suggested.

The Americans, like the English, have no love for scientific arrangement. Although the Constitutions

have been drafted by lawyers, and sometimes by the best lawyers of each State, logical classification and discrimination have not been sought after.

The people found the enactment of a new Constitution a convenient opportunity for enunciating doctrines they valued and carrying through reforms they desired. It was a simpler and quicker method than waiting for legislative action, so, when there was a popular demand for the establishment of an institution, or for some legal change, this was shovelled into the new Constitution and enacted accordingly.

The peoples of the States have come to distrust their respective legislatures. Hence they desire not only to do a thing forthwith and in their own way rather than leave it to the chance of legislative action, but to narrow as far as they conveniently can (and sometimes farther) the sphere of the legislature.

There is an unmistakable wish in the minds of the people to act directly rather than through their representatives in legislation. This sentiment is characteristic of democracies everywhere. The same conscious relish for power which leads some democracies to make their representatives mere delegates, finds a further development in passing by the representatives, and setting the people itself to make and repeal laws.

Those who have read the chapters describing the growth and expansion of the Federal Constitution, will naturally ask how far the remarks there made apply to the Constitutions of the several States.

These instruments have less capacity for development, whether by interpretation or by usage, than the Constitution of the United States: firstly, because they are more easily, and therefore more frequently, amended or recast; secondly, because they are far longer, and go

into much more minute detail. The Federal Constitution is so brief and general that custom must fill up what it has left untouched, and judicial construction evolve the application of its terms to cases they do not expressly deal with. But the later State Constitutions are so full and precise that they need little in the way of expansive construction, and leave comparatively little room for the action of custom.

The rules of interpretation are in the main the same as those applied to the Federal Constitution. One important difference must, however, be noted, springing from the different character of the two governments. The National Government is an artificial creation, with no powers except those conferred by the instrument which created it. A State Government is a natural growth, which *prima facie* possesses all the powers incident to any government whatever. Hence, if the question arises whether a State legislature can pass a law on a given subject, the presumption is that it can do so: and positive grounds must be adduced to prove that it cannot. It may be restrained by some inhibition either in the Federal Constitution, or in the Constitution of its own State. But such inhibition must be affirmatively shown to have been imposed, or, to put the same point in other words, a State Constitution is held to be, not a document conferring defined and specified powers on the legislature, but one regulating and limiting that general authority which the representatives of the people enjoy *ipso jure* by their organization into a legislative body.

"It has never been questioned that the American legislatures have the same unlimited power in regard to legislation which resides in the British Parliament, except where they are restrained by written Constitu-

tions. That must be conceded to be a fundamental principle in the political organization of the American States. We cannot well comprehend how, upon principle, it could be otherwise. The people must, of course, possess all legislative power originally. They have committed this in the most general and unlimited manner to the several State legislatures, saving only such restrictions as are imposed by the Constitution of the United States or of the particular State in question."[1]

"The people, in framing the Constitution, committed to the legislature the whole law-making powers of the State which they did not expressly or impliedly withhold. Plenary power in the legislature, for all purposes of civil government, is the rule. A prohibition to exercise a particular power is an exception."[2]

It must not, however, be supposed from these dicta that even if the States were independent commonwealths, the Federal Government having disappeared, their legislatures would enjoy anything approaching the omnipotence of the British Parliament, "whose power and jurisdiction is," says Sir Edward Coke, "so transcendent and absolute that it cannot be confined, either for persons or causes, within any bounds." "All mischiefs and grievances," adds Blackstone, "operations and remedies that transcend the ordinary course of the laws are within the reach of this extraordinary tribunal." Parliament being absolutely sovereign, can command, or extinguish and swallow up the executive and the judiciary, appropriating to itself their functions. But

[1] Redfield, C.-J., in 27 Vermont Reports, p. 142, quoted by Cooley, *Constit. Limit.*, p. 108.

[2] Denio, C.-J., in 15 N. Y. Reports, p. 543, quoted by Cooley, *ibid.* p. 107.

in America, a legislature is a legislature and nothing more. The same instrument which creates it creates also the executive governor and the judges. They hold by a title as good as its own. If the legislature should pass a law depriving the governor of an executive function conferred by the Constitution, that law would be void. If the legislature attempted to interfere with the jurisdiction of the courts, their action would be even more palpably illegal and ineffectual.[1]

The executive and legislative departments of a State government have of course the right and duty of acting in the first instance on their view of the meaning of the Constitution. But the ultimate expounder of that meaning is the judiciary; and when the courts of a State have solemnly declared the true construction of any provision of the Constitution, all persons are bound to regulate their conduct accordingly. As was observed in considering the functions of the Federal judiciary (Chapter XXIII.), this authority of the American courts is not in the nature of a political or discretionary power vested in them; it is a legitimate and necessary consequence of the existence of a fundamental law superior to any statute which the legislature may enact,[2] or to any right which a governor may conceive him-

[1] It has, for instance, been held that a State legislature cannot empower election boards to decide whether a person has by duelling forfeited his right to vote or hold office, this inquiry being judicial and proper only for the regular tribunals of the State.—Cooley, *Constit. Limit.*, p. 112. Acts passed by legislatures affecting some judicial decision already given, have repeatedly been held void by the Courts. They would be doubly void as also transgressing the Federal Constitution.

[2] In Switzerland, however, the cantonal courts have not, except perhaps in Uri, the right to declare invalid a law made by a cantonal legislature, the legislature being apparently deemed the judge of its own powers. A cantonal law may, however, be quashed, in some cases, by the Federal Council, or pronounced invalid by the Federal Court. See an interesting discussion of the question in Dubs, *Das oeffentliche Recht der Schweizerischen Eidgenossenschaft*, Part I. p. 113.

self to possess. To quote the words of an American decision :—

"In exercising this high authority the judges claim no judicial supremacy; they are only the administrators of the public will. If an Act of the legislature is held void, it is not because the judges have any control over the legislative power, but because the Act is forbidden by the Constitution, and because the will of the people, which is therein declared, is paramount to that of their representatives expressed in any law."[1]

It is a well-established rule that the judges will always lean in favour of the validity of a legislative Act; that if there be a reasonable doubt as to the constitutionality of a statute they will solve that doubt in favour of the statute; that where the legislature has been left a discretion they will assume the discretion to have been wisely exercised; that where the construction of a statute is doubtful, they will adopt such construction as will harmonize with the Constitution, and enable it to take effect. So it has been well observed that a man might with perfect consistency argue as a member of a legislature against a bill on the ground that it is unconstitutional, and after having been appointed a judge, might in his judicial capacity sustain its constitutionality. Judges must not inquire into the motives of the legislature, nor refuse to apply an Act because they may suspect that it was obtained by fraud or corruption, still less because they hold it to be opposed to justice and sound policy.[2] "But when a

[1] Quoted by Cooley, *Constit. Limit.*, p. 195, from 2 Bay, 61.

[2] "A court cannot declare a statute unconstitutional and void solely on the ground of unjust and oppressive provisions, or because it is supposed to violate the natural, social, or political rights of the citizen, unless it can be shown that such injustice is prohibited, or such rights guaranteed or protected, by the Constitution. . . . In a case decided in

statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it; and no one can be punished for having refused obedience to it before the decision was made. And what is true of an Act void *in toto*, is true also as to any part of an Act which is found to be unconstitutional, and which consequently is to be regarded as having never at any time been possessed of legal force."[1]

It may be thought, and the impression will be

the supreme court of New York, one of the judges said, 'The inhabitants of New York have a vested right in the City Hall, markets, water-works, ferries, and other public property, which cannot be taken from them any more than their individual dwellings. Their rights rest *not merely upon the Constitution*, but upon the great principles of eternal justice which lie at the foundation of all free governments.' The great principles of eternal justice which affected the particular case had been incorporated in the Constitution, and it therefore became unnecessary to consider what would otherwise have been the rule; nor do we understand the court as intimating any opinion upon that subject. It was sufficient for the case to find that the principles of right and justice had been recognized and protected by the Constitution."—Cooley, pp. 200, 202. Mr. Theodore Bacon of Rochester, New York, writes to me: "In the case of *Gardner* v. *The Village of Newburg* (Johnson's *Chancery Reports*, N. Y. 162), the New York legislature had authorized the village to supply itself with water from a stream, but had made no provision for indemnifying the owners of lands through which the stream flowed for the injury they must suffer from the diversion of the water. The Constitution of New York at that time contained no provision prohibiting the taking of private property for public use without compensation; notwithstanding this, Chancellor Kent restrained the village from proceeding upon the broad general principle which he found in Magna Charta, in a statutory Bill of Rights, which of course could not control the legislature, and in Grotius Puffendorf and Bynkershoek. He referred also to a like provision in the Constitution of the United States, which, however, although expressive of the sentiment of the nation, was intended to apply only to the Federal Government. I believe, however, that this case is quite exceptional; and notwithstanding the very great authority of Chancellor Kent, I apprehend that Judge Cooley's statement would probably now be generally accepted."

[1] Cooley, *Constit. Limit.*, p. 227.

confirmed when we consider as well the minuteness of the State Constitutions as the profusion of State legislation and the inconsiderate haste with which it is passed, that as the risk of a conflict between the Constitution and statutes is great, so the inconveniences of a system under which the citizens cannot tell whether their obedience is or is not due to a statute must be serious. How is a man to know whether he has really acquired a right under a statute? how is he to learn whether to conform his conduct to it or not? How is an investor to judge if he may safely lend money which a statute has empowered a community to borrow, when the statute may be itself subsequently overthrown?

To meet these difficulties some State Constitutions[1] provide that the judges of the supreme court of the State may be called upon by the governor or either house of the legislature to deliver their opinions upon questions of law, without waiting for these questions to arise and be determined in an ordinary lawsuit between parties.[2] This expedient seems a good one, for it procures

[1] Massachusetts, Maine, New Hampshire, Rhode Island, and Florida. In Vermont a similar power is given by statute. In Florida it is only the governor to whom the power has been given, and whereas under the Constitution of 1868 he could obtain the opinion of the justices "upon any point of law," he can by the Constitution of 1886 require it only "upon any question affecting his executive powers and duties." A similar provision was inserted in the Constitution of Missouri of 1865, but omitted in the revised (and now operative) Constitution of 1875, apparently because the judges had so often refused to give their advice when asked for it by a house of the legislature, that there seemed little use in retaining the enactment. In the other States the judges have apparently always consented to answer, save on one or two occasions in Massachusetts. See on the whole subject an interesting pamphlet by Mr. J. B. Thayer, of the Harvard University Law School.

[2] The judges of the supreme court of Massachusetts suggest in their very learned and instructive opinion, delivered to the legislature, December 31, 1878, that this provision, which appears first in the Massachusetts Constitution of 1780, and was doubtless borrowed thence by the other States, "evidently had in view the usage of the English Constitu-

a judicial and non-partisan interpretation, and procures it at once before rights or interests have been created. But it is open to the objection that the opinions so pronounced by judges are given before cases have arisen which show how in fact a statute is working, and what points it may raise; and that in giving them the judges have not, as in contested lawsuits, the assistance of counsel arguing for their respective clients. And this is perhaps the reason why in most of the States where the provision exists, the judges have declared that they act under it in a purely advisory capacity, and that their deliverances are to be deemed merely expressions of opinion, not binding upon them should the point afterwards arise in a lawsuit involving the rights of parties.[1]

The highest court of a State may depart from a view it has previously laid down, even in a legal proceeding, regarding the construction of the Constitution, that is to say, it has a legal right to do so if convinced that the former view was wrong. But it is reluctant to do so, because such a course unsettles the law and impairs the respect felt for the bench. And there is less occasion for it to do so than in the

tion, by which the King as well as the House of Lords, whether acting in their judicial or in their legislative capacity, had the right to demand the opinion of the twelve judges of England." This is still sometimes done by the House of Lords; but the opinions of the judges so given are not necessarily followed by that House, and though always reported are not deemed to be binding pronouncements of law similar to the decisions of a court.

[1] Mr. Thayer shows, by an examination of the reported instances, that in Massachusetts, New Hampshire, and Rhode Island, as also in Missouri from 1865 to 1875, the courts held that their opinions rendered under these provisions of the State Constitutions were not to be deemed judicial determinations, equal in authority to decisions given in actual litigation, but were rather *prima facie* impressions, which the judges ought not to hold themselves bound by, when subsequently required to determine the same point in an action or other legal proceeding.

parallel case of the supreme Federal court, because as the process of amending a State Constitution is simpler and speedier than that of altering the Federal Constitution, a remedy can be more easily applied to any mistake which the State judiciary has committed. This unwillingness to unsettle the law goes so far that State courts have sometimes refused to disturb a practice long acquiesced in by the legislature, which they have nevertheless declared they would have pronounced unconstitutional had it come before them while still new.

CHAPTER XXXVIII

THE DEVELOPMENT OF STATE CONSTITUTIONS

It was observed in last chapter that the State Constitutions furnish invaluable materials for history. Their interest is all the greater, because the succession of Constitutions and amendments to Constitutions from 1776 till to-day enables the annals of legislation and political sentiment to be read in these documents more easily and succinctly than in any similar series of laws in any other country. They are a mine of instruction for the natural history of democratic communities. Their fulness and minuteness make them, so to speak, more pictorial than the Federal Constitution. They tell us more about the actual methods and conduct of the government than it does. If we had similar materials concerning the history of as many Greek republics during the ages of Themistocles and Pericles, we could rewrite the history of Greece. Some things, however, even these elaborately minute documents do not tell us. No one could gather from them what were the modes of doing business in the State legislatures, and how great a part the system of committees plays there. No one could learn what manner of men constitute those bodies and determine their character. No one would know that the whole machinery is worked by a restlessly active party

organization. Nevertheless they are so instructive as records of past movements, and as an index to the present tendencies of American democracy, that I heartily regret that the space at my disposal permits me to make only a sparing use of the materials which I gathered during many months spent in studying the one hundred and five Constitutions enacted since the Declaration of Independence.[1]

Three periods may be distinguished in the development of State Governments as set forth in the Constitutions, each period marked by an increase in the length and minuteness of those instruments.

The first period covers about thirty years from 1776 downwards, and includes the earlier Constitutions of the original thirteen States, as well as of Kentucky, Vermont, Tennessee, and Ohio.

Most of these Constitutions were framed under the impressions of the Revolutionary War. They manifest a dread of executive power and of military power, together with a disposition to leave everything to the legislature, as being the authority directly springing from the people.[2] The election of a State governor is in most States vested in the legislature. He is nominally assisted, but in reality checked, by a council

[1] I venture again to commend the study of these constitutions to the philosophic inquirer into what may be called the science of comparative politics. Both among the pre-Revolutionary charters and the State constitutions he will find matter full of instruction. Among the former I may refer especially to the Frame of Government of Pennsylvania, 1682 and 1683, and to the Fundamental Constitutions of Carolina of 1669. These last were framed by John Locke, and revised by the first Lord Shaftesbury. They were found unsuitable, were only partially put in force, and were abrogated by the proprietors in 1693, but they are none the less interesting to the student of history on that account.

[2] See the remarkable passage in the *Federalist*, Nos. xlvi. and xlvii., which by examining the structure of the State Governments, shows the predominance of the legislature.

not of his own choosing. He has not (except in Massachusetts) a veto on the Acts of the legislature. He has not, like the royal governors of colonial days, the right of adjourning or dissolving it. The idea of giving power to the people directly has scarcely appeared, because the legislature is conceived as the natural and necessary organ of popular government, much as the House of Commons is in England. And hence many of these early Constitutions consist of little beyond an elaborate Bill of Rights and a comparatively simple outline of a frame of government, establishing a representative legislature,[1] with a few executive officers and courts of justice carefully separated therefrom.

The second period covers the first half of the present century down to the time when the intensity of the party struggles over slavery (1850-60) interrupted to some extent the natural processes of State development. It is a period of the democratization of all institutions, a democratization due not only to causes native to American soil, but to the influence upon the generation which had then come to manhood of French republican ideas, an influence which declined after 1815 and ended with 1851, since which time French examples and ideas have counted for very little. Such provisions for the maintenance of religious institutions by the State as had continued to exist are now swept away. The principle becomes established that constitutions must be directly enacted by popular vote. The choice of a governor is taken from the legislature to be given

[1] The wide powers of these early legislatures are witnessed to by the fear which prudent statesmen entertained of their action. Madison said, in the Philadelphia Convention of 1787, "Experience proves a tendency in our governments to throw all power into the legislative vortex. The executives of the States are little more than ciphers; the legislatures are omnipotent." How they might abuse this power the case of Rhode Island showed.

to the people. Property qualifications are abolished, and a suffrage practically universal, except that it often excludes free persons of colour, is introduced. Even the judges are not spared. Many Constitutions shorten their term of office, and direct them to be chosen by popular vote. The State has emerged from the English conception of a community acting through a ruling legislature, for the legislature begins to be regarded as being only a body of agents exercising delegated and restricted powers, and obliged to recur to the sovereign people (by asking for a constitutional amendment) when it seeks to extend these powers in any particular direction. The increasing length of the constitutions during this half century shows how the range of the popular vote has extended, for these documents now contain a mass of ordinary law on matters which in the early days would have been left to the legislatures.

In the third period, which begins from about the time of the Civil War, a slight reaction may be discerned, not against popular sovereignty, which is stronger than ever, but in the tendency to strengthen the executive and judicial departments. The governor had begun to receive in the second period, and has now in every State but four, a veto on the acts of the legislature. His tenure of office has been generally lengthened; the restrictions on his re-eligibility generally removed. In many States the judges have been granted larger salaries, and their terms of office lengthened. Some constitutions have even transferred judicial appointments from the vote of the people to the executive. But the most notable change of all has been the narrowing of the competence of the legislature, and the tying up of its action by a variety of complicated restrictions. It may seem that to take powers away from the legislature is to give them to the

people, and is therefore another step towards pure democracy. But in America this is not so, because a legislature always yields to any popular clamour, however transient, while direct legislation by the people involves some delay. Such provisions are therefore conservative in their results, and are really checks imposed by the citizens upon themselves.

This process of development, which has first exalted and then depressed the legislature, which has extended the direct interference of the people, which has changed the Constitution itself from a short into a long, a simple into a highly complex document, has of course not yet ended. Forces are already at work which will make the constitutions of forty years hence different from those of to-day. To conjecture the nature of these forces we must examine a little further the existing constitutions of the States, and especially the later among them; and must distinguish between different types of constitution, corresponding to the different parts of the Union in which the States that have framed them are situate.

Three types were formerly distinguishable, the old colonial type, best seen in New England and the older middle States, the Southern or Slave State type (in which the influence of the first Constitution of Virginia was noticeable), and the new or Western type. At present these distinctions are less marked. All the Southern States except Kentucky (which never passed an ordinance of secession) have given themselves new constitutions since the war; and the differences between these and the new constitutions of the North-Western and Pacific States are not salient. This is because the economic and social changes produced by the War of Secession and abolition of slavery broke to pieces the old social conditions, and made these Southern States

virtually new communities like those of the West. There is still, however, a strong contrast between the New England States, to which for this purpose we may add New Jersey and Delaware, whose present constitutions all date from the period between 1780 and 1844, and the Southern and Western States, nearly all of whose constitutions are subsequent to that year. In these older States the power of the executive is generally greater. The judges are frequently named by the governor, and not elected by the people. The electoral districts are not always equal. The constitutions are not so minute, and therefore the need of recurring to the people to change them arises less frequently.

Taking the newer, and especially the Western and Southern Constitutions, and remembering that each is the work of an absolutely independent body, which (subject to the Federal Constitution) can organize its government and shape its law in any way it pleases, so as to suit its peculiar conditions and reflect the character of its population, one is surprised to find how similar these newer instruments are. There is endless variety in details, but a singular agreement in essentials. The influences at work, the tendencies which the constitutions of the last forty years reveal, are evidently the same over the whole Union. What are the chief of those tendencies? One is for the constitutions to grow longer. This is an absolutely universal rule. Virginia, for instance, put her first constitution, that of 1776, into four closely printed quarto pages, that is, into about three thousand two hundred words.[1] In 1830, she needed seven pages; in 1850, eighteen pages; in 1870, twenty-two pages, or seventeen thousand

[1] The full quarto page in Poore's edition of *The Federal and State Constitutions* contains about eight hundred words.

words. Texas has doubled the length of her constitution from sixteen quarto pages in 1845 to thirty-four in 1876. Pennsylvania was content in 1776 with a document of eight pages, which for those times was a long one; she now requires twenty-three. The constitution of Illinois filled ten pages in 1818; in 1870 it had swollen to twenty-five. These are fair examples, but the extremes are marked by the constitution of New Hampshire of 1776, which was of about six hundred words (not reckoning the preamble), and the constitution of Missouri of 1875, which has more than twenty-six thousand words. The new constitutions are longer, not only because new topics are taken up and dealt with, but because the old topics are handled in far greater detail. Such matters as education, ordinary private law, railroads, State and municipal indebtedness, were either untouched or lightly touched in the earlier instruments. The provisions regarding the judiciary and the legislature, particularly those restricting the power of the latter, have grown far more minute of late years, as abuses of power became more frequent, and the respect for legislative authority less. As the powers of a State legislature are *prima facie* unlimited, these bodies can be restrained only by enumerating the matters withdrawn from their competence, and the list grows always ampler. The time might almost seem to have come for prescribing that, like Congress, they should be entitled to legislate on certain enumerated subjects only, and be always required to establish affirmatively their competence to deal with any given topic.

I have already referred to the progress which the newer constitutions show towards more democratic arrangements. The suffrage is now in almost every State enjoyed by all adult males. Citizenship is quickly and

easily accorded to immigrants. And, most significant of all, the superior judges, who were formerly named by the governor, or chosen by the legislature, and who held office during good behaviour, are now in most States elected by the people for fixed terms of years. I do not ignore the strongly-marked democratic character of even the first set of constitutions, formed at and just after the Revolution; but that character manifested itself chiefly in negative provisions, *i.e.* in forbidding exercises of power by the executive, in securing full civil equality and the primordial rights of the citizen. The new democratic spirit is positive as well as negative. It refers everything to the direct arbitrament of the people. It calls their will into constant activity, sometimes by the enactment of laws on various subjects in the Constitution, sometimes by prescribing to the legislature the purposes which legislation is to aim at. Even the tendency to support the executive against the legislature is evidence not so much of respect for authority as of the confidence of the people that the executive will be the servant of popular opinion, prepared at its bidding to restrain that other servant—the legislature—who is less trusted, because harder to fix with responsibility for misdoing. On the whole, therefore, there can be no doubt that the democratic spirit is now more energetic and pervasive than it was in the first generation. It is a different kind of spirit. It is more practical, more disposed to extend the sphere of governmental interference, less content to rely on general principles. One discovers in the wording of the most recent constitutions a decline of that touching faith in the efficacy of broad declarations of abstract human rights which marked the disciples of Jefferson. But if we compare the present with the second or Jack-

sonian age, it may be said that there has been in progress for some years past a certain anti-democratic reaction, fainter than the levelling movement of sixty years ago, and not likely to restore the state of things that existed before that movement, yet noticeable as showing that the people do learn by experience, and are not indisposed to reverse their action and get clear of the results of past mistakes. The common saying that on the road to democracy there are *vestigia nulla retrorsum* is not universally true in America.

That there are strong conservative tendencies in the United States is a doctrine whose truth will be illustrated later on. Meantime it is worth while to ask how far the history of State constitutions confirms the current notion that democracies are fond of change. The answer is instructive, because it shows how flimsy are the generalizations which men often indulge in when discussing forms of government, as if all communities with similar forms of government behaved in the same way. All the States of the Union are democracies, and democracies of nearly the same type. Yet while some change their constitutions frequently, others scarcely change theirs at all. Let me recall the reader's mind to the distinction already drawn between the older or New England type and the newer type, which we find in the Southern as well as the Western States. It is among the latter that changes are frequent. Louisiana, for instance, whose State life began in 1812, has had six complete new constitutions, without counting the so-called Secession Constitution of 1861. So has Georgia. Arkansas, which dates from 1836, has had five, besides many amendments passed in the intervals. Virginia and South Carolina (both original States) have had five each. Among the Northern States, Pennsylvania (an

original State) has had four; Illinois, dating from 1818, three; New York, three; Delaware, three; whereas Connecticut and Rhode Island[1] (both original States), and Maine (dating from 1820), have had only one each, Vermont and New Hampshire two each. Massachusetts still lives under her Constitution of 1780, which has indeed been amended at various dates, yet not to such an extent as to efface its original features. Of the causes of these differences I will now touch on two only. One is the attachment which in an old and historic, a civilized and well-educated community, binds the people to their accustomed usages and forms of government. It is the newer States, without a past to revere, with a population undisciplined or fluctuating, that are prone to change. In well-settled commonwealths the longer a constitution has stood untouched, the longer it is likely to stand, because the force of habit is on its side, because an intelligent people learns to value the stability of its institutions, and to love that which it is proud of having created.

The other cause is the difference between the swiftness with which economic and social changes move in different parts of the country. They are the most constant sources of political change, and find their natural expression in alterations of the Constitution. Such changes have been least swift and least sudden in the New England and Middle States, though in some of the latter the growth of great cities, such as New York and Philadelphia, has induced them, and induced therewith a tendency to amend the constitutions so as to meet new conditions and check new evils. They have been most

[1] Connecticut gave herself a new constitution in 1818, Rhode Island in 1842, both having previously lived under their old colonial constitutions.

marked in regions where population and wealth have grown with unexampled speed, and in those where the extinction of slavery has changed the industrial basis of society. Here lies the explanation of the otherwise singular fact that several of the original States, such as Virginia and Georgia, have run through many constitutions. These whilom Slave States have not only changed greatly but changed suddenly: society was dislocated by the Civil War, and has had to make more than one effort to set itself right.

The total number of distinct constitutions adopted in 1776 or enacted in the several States since that year —the States being then 13 and now 38 in number— is 105; and to these constitutions 214 partial amendments have been at different times adopted.[1] The period since 1860 shows a somewhat greater frequency of change than the eighty-four years preceding; but that may be accounted for by the effects of the war on the Southern States. The average duration of a constitution has been estimated at thirty years, and ten have lasted more than sixty years. In this connection it must be remarked that both whole constitutions and particular amendments are frequently rejected by the people when submitted to them at the polls. This has befallen six draft constitutions and more than twenty-eight amendments within the last ten years.[2]

Putting all these facts together, and bearing in mind to how large an extent the constitutions now, whether wisely or foolishly, embody ordinary private and ad-

[1] I take these figures from Dr. Hitchcock's *Study of American State Constitutions*, published in 1887, adding the last Constitution of Florida. Several Constitutions have been amended since 1886, but I am unable to give the exact number of amendments.

[2] Macpherson's *Handbook* mentions 34 constitutional amendments as adopted in the two years from July 1884 to July 1886, and 4 as rejected.

ministrative law and therefore invite amendment, the American democracy seems less inclined to changefulness and inconstancy than either abstract considerations or the descriptions of previous writers, such as De Tocqueville, would have led us to expect. The respect for these fundamental instruments would no doubt be greater if the changes in them were even fewer, and the changes would be fewer if the respect were greater; but I see little reason to think that the evil is increasing.

A few more observations on what the Constitutions disclose are needed before I conclude this necessarily brief sketch of the most instructive sources for the history of popular government which our century has produced—documents whose clauses, while they attempt to solve the latest problems of democratic commonwealths, often recall the earliest efforts of our English forefathers to restrain the excesses of mediæval tyranny.

The Constitutions witness to a singular distrust by the people of its own agents and officers, not only of the legislatures but also of local authorities, as well rural as urban, whose powers of borrowing or undertaking public works are strictly limited. Even the judges are in some States restrained in their authority to commit for contempt of court, and, while permitted to state the law, are generally forbidden to charge a jury upon the facts of a case.

They witness also to a jealousy of the Federal government. By most constitutions a Federal official is made incapable, not only of State office, but of being a member of a State legislature. These prohibitions are almost the only references to the National government to be found in the State constitutions, which so far as their terms go might belong to independent communities. They usually talk of corporations belonging to other

States as "foreign," and sometimes try to impose special burdens on them.

They show a wholesome anxiety to protect and safeguard private property in every way. The people's consciousness of sovereignty has not used the opportunity which the enactment of a constitution gives to override private rights: there is rather a desire to secure such rights from any encroachment by the legislature: witness the frequent provisions against the taking of property without due compensation, and against the passing of private or personal statutes which could unfairly affect individuals. The only exceptions to this rule are to be found in the case of anything approaching a monopoly, and in the case of wealthy corporations. But the "monopolist" is regarded as the enemy of the ordinary citizen, whom he oppresses; and the corporation—it is usually corporations that are monopolists—is deemed not a private person at all, but a sort of irresponsible tyrant whose resources enable him to overreach the law. Corporations are singled out for special taxation. Labour laws are enacted to apply to them only. A remarkable instance of this hostility to monopolies is to be found in the Constitution of Illinois of 1870, with its provisions anent grain elevators, warehouses, and railroads.[1] Nor are the newer constitutions of other Western States, such as Wisconsin and Texas, less instructive in this respect.

The extension of the sphere of State interference, with the corresponding departure from the doctrine of *laissez faire*, is a question so large and so interesting as to require a chapter to itself. Here it may suffice to remark, that some departments of governmental action, which on the

[1] See the remarkable group of cases beginning with *Munn* v. *Illinois* (commonly called the Granger Cases) in 94 U.S. Reports, p. 113.

continent of Europe have long been handled by the State, are in America still left to private enterprise. For instance, the States neither own nor manage railways, or telegraphs, or mines, or forests, and they sell their public lands instead of working them. There is, nevertheless, visible in recent constitutions a tendency to extend the scope of public administrative activity. Some of the newer instruments establish ministries of agriculture, labour offices, mining commissioners, land registration offices, dairy commissioners, and agricultural or mining colleges. And a reference to the statutes passed within the last few years in the Western States will show that more is being done in this direction by the legislatures, as exponents of popular sentiment, than could be gathered from the constitutions, most of which are more than ten years old.

A spirit of humanity and tenderness for suffering, very characteristic of the American people, appears in the directions which many constitutions contain for the establishment of charitable and reformatory institutions. Sometimes the legislature is enjoined to provide that the prisons are made comfortable. On the other hand, this tenderness is qualified by the judicious severity which in most States debars persons convicted of crime from the electoral franchise.

In the older Northern constitutions, and in nearly all the more recent constitutions of all the States, ample provision is made for the creation and maintenance of schools. Even universities are the object of popular zeal, though a zeal not always according to knowledge. Several Western constitutions direct their establishment and support from public funds or land grants.

Although a Constitution is the fundamental and supreme law of the State, one must not conclude that

its provisions are any better observed and enforced than those of an ordinary statute. There is sometimes reason to suspect that when an offence is thought worthy of being specially mentioned in a constitution, this happens because it is specially frequent, and because it is feared that the legislature may shrink from applying due severity to repress it. Certain it is that in many instances the penalties threatened by constitutions fail to attain their object. For instance, the constitutions of most of the Southern States have for many years past declared duellists, and even persons who abet a duel by carrying a challenge, incapable of office, or of sitting in the legislature. Yet the practice of private warfare does not seem to have declined in Mississippi, Texas, or Arkansas, where these provisions exist. Virginia had such a provision in her constitution of 1830. She repeated it in her constitution of 1850, but with the addendum, that the disqualification should not attach to those who had offended previously —*i.e.* in violation of the constitution of 1830.[1] So far as the enactment has had any effect, that effect would seem to have been to encourage the practice of shooting at sight, which is neither morally nor socially

[1] "The General Assembly may provide that no person shall be capable of holding or being elected to any post of profit, trust, or emolument, civil or military, legislative, executive, or judicial, under the government of this commonwealth who shall hereafter fight a duel, or send or accept a challenge to fight a duel, the probable issue of which may be the death of the challenger or challenged, or who shall be second to either party, or shall in any manner aid or assist in such duel, or shall be knowingly the bearer of such challenge or acceptance; but no person shall be so disqualified by reason of his having heretofore fought such duel or sent or accepted such challenge, or been second in such duel, or bearer of such challenge or acceptance" (Constitution of 1830, Art. iii. § 12, repeated in Constitution of 1850, Art. iv. § 17). In her Constitution of 1870 Virginia is not content with suggesting to the legislature to disqualify duellists, but does this directly by Art. iii. § 3. Seventeen Constitutions now declare duellists disqualified for office, and nine others add a disqualification for the franchise. Nearly all are Southern and Western States.

an improvement on duelling, though apparently exempt from these constitutional penalties.

New York has been so much exercised on the subject of bribery and corruption, as to declare (amendments of 1874), not only that every member of the legislature and every officer shall take an oath that he has given nothing as a consideration for any vote received for him (amendment to Art. xii. § 1), and that the legislature shall pass laws excluding from the suffrage all persons convicted of bribery or of any infamous crime (amendment to Art. ii. § 2), but also (amendment to Art. xv. §§ 1 and 2) that the giving or offering to or receiving by an officer of any bribe shall be a felony. And lobbying, which is openly practised in every building where a legislature meets, is declared by California to be a felony, and by Georgia to be a crime.

CHAPTER XXXIX

DIRECT LEGISLATION BY THE PEOPLE

THE difficulties and defects inherent in the method of legislating by a Constitution are obvious enough. Inasmuch as the people cannot be expected to distinguish carefully between what is and what is not proper for a fundamental instrument, there arises an inconvenient as well as unscientific mixture and confusion of private law and administrative regulation with the frame of government and the general doctrines of public law. This mixture, and the practice of placing in the Constitution directions to the legislature to legislate in a certain sense, or for certain purposes, embarrass a legislature in its working by raising at every turn questions of its competence to legislate, and of the agreement between its acts and the directions contained in the Constitution. And as the legislature is seldom either careful or well-advised, there follows in due course an abundant crop of questions as to the constitutionality of statutes, alleged by those whom they affect prejudicially in any particular instance to be either in substance inconsistent with the Constitution, or such as the legislature was expressly forbidden by it to pass. These inconveniences are no doubt slighter in America than they would be in Europe, because the lawyers and the

judges have had so much experience in dealing with questions of constitutional conflict and *ultra vires* legislation that they now handle them with amazing dexterity. Still, they are serious, and such as a well-ordered government ought to avoid. The habit of putting into the Constitution matters proper for an ordinary statute has the further disadvantage that it heightens the difficulty of correcting a mistake or supplying an omission. The process of amending a constitution even in one specific point is a slow one, to which neither the legislature, as the proposing authority, nor the people, as the sanctioning authority, willingly resort. Hence blemishes remain and are tolerated, which a country possessing, like England, a sovereign legislature would correct in the next session of Parliament without trouble or delay.

It is sometimes difficult to induce the people to take a proper interest in the amendment of the Constitution. In those States where a majority of all the qualified voters, and not merely of those voting, is required to affirm an amendment, it often happens that the requisite majority cannot be obtained owing to the small number who vote.[1] This has its good side, for it is a check on hasty or frequent change. But it adds greatly to the difficulty of working a rigid or supreme Constitution, that you may find an admitted, even if not very grave evil, to be practically irremovable, because the mass of the people cannot be induced to care enough about the matter to come to the polls, and there deliver their judgment upon it.

These defects are so obvious that we are entitled to expect to find correspondingly strong grounds for the

[1] This has happened more than once of late years in Kentucky and Delaware.

maintenance, and indeed the steady extension of the plan of legislating by and through a Constitution. What are these grounds? Why do the Americans tend more and more to remove legislation from the legislature and entrust it to the people?

We could quite well imagine the several State governments working without fundamental instruments to control them. In a Federal government which rests on, or at least which began from, a compact between a number of originally separate communities, the advantages of having the relations of these communities to one another and to the central authority defined by an instrument placed beyond the reach of the ordinary legislature, and not susceptible of easy change, are clear and strong. Such an instrument is the guarantee for the rights of each member placed above the impulses of a chance majority. The case is quite different when we come to a single homogeneous community. Each American State might now, if it so pleased, conduct its own business, and govern its citizens as a commonwealth "at common law," with a sovereign legislature, whose statutes formed the highest expression of popular will. Nor need it do so upon the cabinet system of England. It might retain the separation from the legislature of the executive governor, elected by the people, and exercising his veto on their behalf, and yet dispense altogether with a rigid fundamental constitution, being content to vest in its representatives and governor the plenitude of its own powers. This, however, no American State does, or has ever done, or is likely to do. And the question why it does not suggests a point of interest for Europeans as well as for Americans.

In the republics of the ancient world, where representative assemblies were unknown, legislative power

rested with the citizens meeting in what we should now call primary assemblies, such as the Ecclesia of Syracuse or the Comitia of Rome. The same plan prevailed in the early Teutonic tribes, where the assembly of the freemen exercised all such powers as did not belong to the king. The laws of the kings of the Angles and Saxons, the capitularies of Charlemagne, were promulgated in assemblies of the nation, and may be said, though emanating from the prince, to have been enacted by the people. During the middle ages, these assemblies died out, and the right of making laws passed either to the sovereign or to a representative assembly surrounding the sovereign such as the English Parliament, the older method surviving only in such primitive communities as some of the Swiss cantons, and the tiny republics of Andorra and San Marino. The first reappearance in modern Europe of the scheme of direct legislation by the people is, so far as I know, the provision of the French Constitution framed by the National Convention in 1793, which directs that any law proposed by the legislative body shall be published and sent to all the communes of the Republic, whose primary assemblies shall be convoked to vote upon it, in case objections to it have been raised by one-tenth of these primary assemblies in a majority of the departments. In recent times the plan has become familiar by its introduction, not only into most of the cantons of Switzerland, but into the Swiss Federal Republic, which constantly applies it, under the name of Referendum, by submitting to the vote of the people laws passed by the Federal legislature.[1]

[1] The Swiss Federal Constitution provides that any Federal law and Federal resolution of general application and not of an urgent character, must on the demand of eight cantons or of 30,000 voters be submitted to popular vote for acceptance or rejection (Constit. Art. 89). This vote is

In England the influence of the same idea may be discovered in two phenomena of recent years. One is the proposal frequently made to refer to the direct vote of the inhabitants of a town or other local area the enactment of some ordinance affecting that district: as, for instance, one determining whether or no licences shall be granted within it for the sale of intoxicating liquors. This method of deciding an issue, commonly known as Local Option, is a species of referendum. It differs from the Swiss form, not merely in being locally restricted, but rather in the fact that it is put to the people, not for the sake of confirming an Act of the legislature, but of deciding whether a particular Act shall be operative in a given area. But the principle is the same; it is a transference of legislative authority from a representative body, whether the parliament of the nation or the municipal council of the town, to the voters at the polls.[1]

The other English illustration may seem far fetched, but on examination will be seen to involve the same idea. It is now beginning to be maintained as a constitutional doctrine, that when any large measure of change is carried through the House of Commons, the House of Lords has a right to reject it for the purpose of compelling a dissolution of Parliament, that is, an appeal to the voters. And there are some signs that the view is making way, that even putting the House of Lords out of sight, the House of Commons is not morally, though of course it is legally, entitled to pass a bill seriously changing the Constitution, which was not submitted to the electors at the preceding general

frequently in the negative. See Swiss Federal Constitution, Art. 89; and the remarks of M. Numa Droz in his *Instruction civique*, § 172. In some cantons the submission of laws to popular vote is compulsory. In Geneva it is *facultatif*. See *Genève et ses Institutions*, by A. Gavard.

[1] The reference to the vote of the ratepayers of a parish of the question whether a rate shall be levied for a free library is another instance.

election. A general election, although in form a choice of particular persons as members, has now practically become an expression of popular opinion on the two or three leading measures then propounded and discussed by the party leaders, as well as a vote of confidence or no confidence in the Ministry of the day. It is in substance a vote upon those measures; although, of course, a vote only on their general principles, and not, like the Swiss Referendum, upon the statute which the legislature has passed. Even therefore in a country which clings to and founds itself upon the absolute supremacy of its representative chamber, the notion of a direct appeal to the people has made progress.[1]

In the United States, which I need hardly say has in this matter been nowise affected by France or Switzerland or England, but has developed on its own lines, the conception that the people (*i.e.* the citizens at large) are and ought of right to be the supreme legislators, has taken the form of legislation by enacting or amending a Constitution. Instead of, like the Swiss, submitting ordinary laws to the voters after they have passed the legislature, the Americans take subjects which belong to ordinary legislation out of the category of statutes, place them in the Constitution, and then handle them as parts of this fundamental instrument. They are not called laws; but laws they are to all intents and purposes, differing from statutes only in being enacted by an authority which is not a constant but an occasional

[1] Much importance has come to be attached in England to casual parliamentary elections occurring when any important measure is before Parliament, because such an election is taken to indicate the attitude of the people generally towards the measure, and by consequence the judgment they would pronounce were a general election held. There have been instances in which a measure or part of a measure pending in Parliament has been dropped, because the result of the "by-election" was taken to indicate that it displeased the people.

body, called into action only when a Convention or a legislature lays propositions before it.

I have already explained the historical origin of this system, how it sprang from the fact that the Constitutions of the colonies having been given to them by an external authority superior to the colonial legislature, the people of each State, seeing that they could no longer obtain changes in their Constitution from Britain, assumed to themselves the right and duty of remodelling it; putting the collective citizendom of the State into the place of the British Crown as sovereign. The business of creating or remodelling an independent commonwealth was to their thinking too great a matter to be left to the ordinary organs of State life. This feeling, which had begun to grow from 1776 onwards, was much strengthened by the manner in which the Federal Constitution was enacted in 1788 by State conventions. It seemed to have thus received a specially solemn ratification; and even the Federal legislature, which henceforth was the centre of national politics, was placed far beneath the document which expressed the will of the people as a whole.

As the republic went on working out both in theory and in practice those conceptions of democracy and popular sovereignty which had been only vaguely apprehended when enunciated at the Revolution, the faith of the average man in himself became stronger, his love of equality greater, his desire, not only to rule, but to rule directly in his own proper person, more constant. These sentiments would have told still further upon State governments had they not found large scope in local government. However, even in State affairs they made it an article of faith that no Constitution could be enacted save by the direct vote of

the citizens; and they inclined the citizens to seize such chances as occurred of making laws for themselves in their own way. Concurrently with the growth of these tendencies there had been a decline in the quality of the State legislatures, and of the legislation which they turned out. They were regarded with less respect; they inspired less confidence. Hence the people had the further excuse for superseding the legislature, that they might reasonably fear it would neglect or spoil the work they desired to see done.

Instead of being stimulated by this distrust to mend their ways and recover their former powers, the State legislatures fell in with the tendency, and promoted their own supersession. The chief interest of their members, as will be explained later, is in the passing of special or local Acts, not of general public legislation. They are extremely timid, easily swayed by any active section of opinion, and afraid to stir when placed between the opposite fires of two such sections, as for instance, between the Prohibitionists and the liquor-sellers. Hence they welcomed the direct intervention of the people as relieving them of embarrassing problems. They began to refer to the decision of a popular vote matters clearly within their own proper competence, such as the question of liquor traffic, or the creation of a system of gratuitous schools. This happened as far back as thirty years ago. And in New York, the legislature having been long distracted and perplexed by the question whether articles made by convicts in the State prisons should be allowed to be sold, and so to compete with articles made by private manufacturers, recently resolved to invite the opinion of the multitude, and accordingly passed an Act under which the question was voted on over the whole State. They could not (except of

course by proposing a constitutional amendment) enable the people to legislate on the point; for it has been often held by American courts that the legislature, having received a delegated power of law-making, cannot delegate that power to any other person or body.[1] But they could ask the people to advise them how they should legislate; and having obtained its view in this manner, could pass a statute in conformity with its wishes.

It is, however, chiefly in the form of an amendment to the Constitution that we find the American voters exercising direct legislative power. And this method comes very near to the Swiss referendum, because the amendment is first discussed and approved by the legislature, a majority greater than a simple majority being required in some States, and then goes before the

[1] According to the maxim *Delegata potestas non delegatur*, a maxim which would not apply in England, because there Parliament has an original and not a delegated authority.

Judge Cooley says: "One of the settled maxims of constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional authority alone the laws must be made until the Constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved" (*Constit. Limit.*, p. 141). He quotes from Locke (*Civil Government*, § 142) the remark that "The legislature neither must nor can transfer the power of making laws to anybody else, or place it anywhere but where the people have." This is one of Locke's "bounds set to the legislative power of every commonwealth in every form of government;" but it has not precluded the British Parliament from delegating large, and in many cases truly legislative, powers to particular persons or authorities, such as the Crown in Council.

There has been much difference of opinion among American courts as to the extent to which a legislature may refer the operation of a general law to popular vote in a locality, but "the clear weight of authority is in support of legislation of the nature commonly known as local option laws." —Cooley, *ut supra*, p. 152; and see the cases collected in his notes.

citizens voting at the polls. Sometimes the State Constitution provides that a particular question shall be submitted by the legislature to the voters; thus creating a referendum for that particular case. Thus Wisconsin refers it to the voters to decide whether or no banks shall be chartered.[1] Minnesota declares that a certain class of railway laws shall not take effect unless submitted to and ratified by a majority of the electors. And she provides, by a later amendment to her Constitution, that "the moneys belonging to the internal improvement land fund shall never be appropriated for any purpose till the enactment for that purpose shall have been approved by a majority of the electors of the State, voting at the annual general election following the passage of the Act."[2] In this last instance the referendum goes the length of constituting the voters the financial authority for the State, withdrawing from the legislature what might seem the oldest and most essential of its functions.

It is not uncommon for proposals submitted by the legislature in the form of constitutional amendments to be rejected by the people. Thus in Indiana, Nebraska, Ohio, and Oregon, the legislature submitted amendments extending the suffrage to women, and the people in all four States refused the extension. In Colorado, where

[1] Constitution of 1843, Art. xi. § 5.—"The legislature may submit to the voters at any general election the question of 'Bank or no bank?' and if at any such election a number of votes equal to a majority of all the votes cast at such election on that subject shall be in favour of banks, then the legislature shall have power to grant bank charters, or to pass a general banking law, with such restrictions and under such regulations as they may deem expedient for the protection of the bill-holders: *Provided*, that no such grant or law shall have any force or effect until the same shall have been submitted to a vote of the electors of the State at some general election, and been approved by a majority of the votes cast on that subject at such election."

[2] Amendments of 1871 and 1874 to the Constitution of 1857.

the Constitution of 1876 had provided a special referendum on the point, the legislature passed its woman franchise law, and submitted it to popular vote in October 1877, when it was rejected by 14,000 votes to 7400.

What are the practical advantages of this plan of direct legislation by the people? Its demerits are obvious. Besides those I have already stated, it tends to lower the authority and sense of responsibility in the legislature; and it refers matters needing much elucidation by debate to the determination of those who cannot, on account of their numbers, meet together for discussion, and many of whom may have never thought about the matter.[1] These considerations will to most Europeans appear decisive against it. The proper course, they will say, is to improve the legislatures. The less you trust them, the worse they will be. They may be ignorant; yet not so ignorant as the masses.

But the improvement of the legislatures is just what the Americans despair of, or, as they would prefer to say, have not time to attend to. Hence they fall back on the referendum as the best course available under the circumstances of the case, and in such a world as the present. They do not claim that it has any great educative effect on the people. But they remark with truth that the mass of the people are equal in intelligence

[1] A Scotch local option bill proposing to refer to the vote of the ratepayers the decision of the question whether licences for the sale of intoxicating liquors in any town shall be granted has called forth much discussion as to the merits of popular voting. It is urged by some that this provision, by taking away from the representative local authority the determination of an important question, will lower the position of that authority, and make leading residents less eager to be elected members of it. It is replied that the local authorities cannot always be trusted in such a question, that the ratepayers will be satisfied with no decision but their own, and that to make the opinion of a candidate on this one question the test of his fitness to be elected a member of the local authority will really injure the election, by excluding men who might possibly be the best in point of personal capacity.

and character to the average State legislator, and are exposed to fewer temptations. The legislator can be "got at," the people cannot. The personal interest of the individual legislator in passing a measure for chartering banks or spending the internal improvement fund may be greater than his interest as one of the community in preventing bad laws. It will be otherwise with the bulk of the citizens. The legislator may be subjected by the advocates of women's suffrage or liquor prohibition to a pressure irresistible by ordinary mortals; but the citizens are too numerous to be all wheedled or threatened. Hence they can and do reject proposals which the legislature has assented to. Nor should it be forgotten that in a country where law depends for its force on the consent of the governed, it is eminently desirable that law should not outrun popular sentiment, but have the whole weight of the people's deliverance behind it.

A brilliant, though severe, critic of Canadian institutions deplores the want of some similar arrangement in the several Provinces of the Dominion. Having remarked that the veto of the lieutenant-governor on the Acts of a Provincial legislature is in practice a nullity, and that the central government never vetoes such Acts except where they are held to exceed the constitutional competence of the legislature, he urges that what is needed to cure the faults of Provincial legislation is to borrow the American plan of submitting constitutional amendments (and, he might add, laws) to popular vote. "The people cannot be lobbied, wheedled, or bull-dozed; the people is not in fear of its re-election if it throws out something supported by the Irish, the Prohibitionist, the Catholic, or the Methodist vote." [1]

[1] Mr. Goldwin Smith in the *Contemporary Review*.

If the practice of recasting or amending State Constitutions were to grow common, one of the advantages of direct legislation by the people would disappear, for the sense of permanence would be gone, and the same mutability which is now possible in ordinary statutes would become possible in the provisions of the fundamental law. But this fault of small democracies,[1] especially when ruled by primary assemblies, is unlikely to recur in large democracies, such as most States have now become, nor does it seem to be on the increase among them. Reference to the people, therefore, acts as a conservative force; that is to say, it is a conservative method as compared with action by the legislature.

In England, and indeed in most European countries, representative government has been hitherto an institution with markedly conservative elements, because the legislating representatives have generally belonged to the wealthy or well-born and educated classes, who having something to lose by change, are disinclined to it, who have been looked up to by the masses, and who have been imperfectly responsive to popular impulses. American legislatures have none of these features. The men are not superior to the multitude, partly because the multitude is tolerably educated and tolerably well off. The multitude does not defer to them. They are horribly afraid of it, and indeed of any noisy section in it. They live in the breath of its favour; they hasten to fulfil its behests almost before they are uttered. Accordingly an impulse or passion dominant among the citizens tells at once on the legislature, and finds expression in a law, the only check being, not the caution

[1] So frequent a charge against the Greek republics and the Italian republics of the middle ages, as Dante says of Florence—

"Ch' a mezzo Novembre,
Non giunge quel che tu d'Ottobre fili."

of that body and its willingness to debate at length, but the incapacity it often shows to embody in a practical form the wishes manifested by the people. Hence in the American States representative government has by no means that conservative quality which Europeans ascribe to it, whereas the direct vote of the people is the vote of men who are generally better instructed than the European masses, more experienced in politics, more sensible of their interest in the stability of the country. If, therefore, we regard the referendum in its effect upon the State legislature, we shall regard it as being rather a bit and bridle than a spur.

This method of legislation by means of a Constitution or amendments thereto, arising from sentiments and under conditions in many respects similar to those which have produced the referendum in Switzerland, is an interesting illustration of the tendency of institutions, like streams, to wear their channels deeper. A historical accident, so to speak, suggested to the Americans the subjection of their legislatures to a fundamental law, and the invention has been used for other purposes far more extensively than its creators foresaw. It is now, moreover, serviceable in a way which those who first used it did not contemplate, though they are well pleased with the result. It acts as a restraint not only on the vices and follies of legislators, but on the people themselves. Having solemnly bound themselves by their Constitution to certain rules and principles, the people come to respect those principles. They have parted with powers which they might be tempted in a moment of excitement, or under the pressure of suffering, to abuse through their too pliant representatives; and although they can resume these powers by enacting a new Constitution or amending

the old one, the process of resumption requires time, and involves steps which secure care and deliberation, while allowing passion to cool, and the prospect of a natural relief from economic evils to appear. It has been well observed by Dr. von Holst[1] that the completeness and consistency with which the principle of the direct sovereignty of the whole people is carried out in America has checked revolutionary tendencies, by pointing out a peaceful and legal method for the effecting of political or economical changes, and has fostered that disposition to respect the decision of the majority which is essential to the success of popular governments.

State Constitutions, considered as laws drafted by a Convention and enacted by the people at large, are better both in form and substance than laws made by the legislature, because they are the work of abler men, acting under a special commission which imposes special responsibilities on them. The appointment of a Constitutional Convention is an important event, which excites general interest in a State. Its functions are weighty and difficult, far transcending those of the regular legislature. Hence the best men in the State desire a seat in it, and, in particular, eminent lawyers become candidates, knowing how much it will affect the law they practise. It is therefore a body superior in composition to either the Senate or the House of a State. Its proceedings excite more interest; its debates are more instructive; its conclusions are more carefully weighed, because they cannot be readily reversed.[2] Or if the work of altering the constitution is carried out by a series of amendments, these are likely to be more

[1] *Constitutional Law of the United States*, § 90.

[2] Occasionally some particular clause of a draft constitution is separately submitted to the people; if they approve it, it is inserted in the constitution, which is voted on as a whole; if they refuse it, it is omitted.

fully considered by the legislature than ordinary statutes would be, and to be framed with more regard to clearness and precision.

In the interval between the settlement by the convention of its draft constitution, or by the legislature of its draft amendments, and the putting of the matter to the vote of the people, there is copious discussion in the press and at public meetings, so that the citizens often go well prepared to the polls. An all-pervading press does the work which speeches did in the ancient republics, and the fact that constitutions and amendments so submitted are frequently rejected, shows that the people, whether they act wisely or not, do not at any rate surrender themselves blindly to the judgment of a convention, or obediently adopt the proposals of a legislature.

These merits are indeed not always claimable for conventions and their remodelled constitutions, much less for individual amendments.[1] The Constitution of California of 1879 (whereof more in a later chapter) is a striking instance to the contrary. But a general survey of this branch of our inquiry leads to the conclusion that the peoples of the several States, in the exercise of this their highest function, show little of that haste, that recklessness, that love of change for the sake of change, with which European theorists, both ancient and modern, have been wont to credit democracy; and that the method of direct legislation by the citizens, liable as it doubtless is to abuse, causes, in the present condition of the States, fewer evils than it prevents.

[1] There is much controversy in America as to whether the better method of reforming a constitution be to recast it by a convention or remove particular blemishes by a series of amendments. Probably the one plan or the other is to be preferred, according to the condition of public sentiment and the likelihood of securing a strong convention.

CHAPTER XL

STATE GOVERNMENTS: THE LEGISLATURE

THE similarity of the frame of government in the thirty-eight republics which make up the United States, a similarity which appears the more remarkable when we remember that each of the republics is independent and self-determined as respects its frame of government, is due to the common source whence the governments flow. They are all copies, some immediate, some mediate, of ancient English institutions, viz. chartered self-governing corporations, which, under the influence of English habits, and with the precedent of the English parliamentary system before their eyes, developed into governments resembling that of England in the eighteenth century. Each of the thirteen colonies had up to 1776 been regulated by a charter from the British Crown, which, according to the best and oldest of all English traditions, allowed it the practical management of its own affairs. The charter contained a sort of skeleton constitution, which usage had clothed with nerves, muscles, and sinews, till it became a complete and symmetrical working system of free government. There was in each a governor, in two colonies chosen by the people,[1] in the rest nominated by the Crown; there

[1] However, in Connecticut and Rhode Island, the governor was chosen,

was a legislature; there were executive officers acting under the governor's commission and judges nominated by him; there were local self-governing communities. In none, however, did there exist what we call cabinet government, *i.e.* the rule of the legislature through a committee of its own members, coupled with the irresponsibility of the permanent nominal head of the executive. This separation of the executive from the legislature, which naturally arose from the fact that the governor was an officer directly responsible to another power than the colonial legislature, viz. the British Crown, his own master to whom he stood or fell,[1] distinguishes the old colonial governments of North America from those of the British colonies of the present day, in all of which cabinet government prevails.[2] The latter are copies of the present Constitution of England; the former resembled it as it existed in the seventeenth and beginning of the eighteenth century before cabinet government had grown up.

When the thirteen colonies became sovereign States at the Revolution, they preserved this frame of government, substituting a governor chosen by the State for one appointed by the Crown. As the new States admitted to the Union after 1789 successively formed their constitutions prior to their admission to the Union, each adopted the same scheme, its people imitating, as

not as now by the people at large, but by the Company assembled in general court, a body which passed into the legislature of the colony. See Charter of Connecticut of 1662, Charter of Rhode Island, 1663.

[1] Even in Connecticut and Rhode Island the governor, though chosen by the colony, was in a sense responsible to the Crown.

[2] Of course in the British self-governing colonies the governor is still responsible to the Crown, but this responsibility is confined within narrow limits by the responsibility of his ministers to the colonial legislature and by the wide powers of that legislature.

was natural, the older commonwealths whence they came, and whose working they understood and admired.[1] They were the more inclined to do so because they found in the older constitutions that sharp separation of the executive, legislative, and judicial powers which the political philosophy of those days taught them to regard as essential to a free government, and they all take this separation as their point of departure.

I have observed in an earlier chapter that the influence on the framers of the Federal Constitution of the examples of free government which they found in their several States, had been profound. We may sketch out a sort of genealogy of Governments as follows :—

First. The English incorporated Company, a self-governing body, with its governor, deputy-governor, and assistants chosen by the freemen of the company, and meeting in what is called the General Court or Assembly.

Next. The Colonial Government, which out of this Company evolves a governor or executive head and a legislature, consisting of representatives chosen by the citizens and meeting in one or two chambers.

Thirdly. The State Government, which is nothing but the colonial government developed and somewhat democratized, with a governor chosen originally by the legislature, now always by the people at large, and now in all cases with a legislature of two chambers. From the original thirteen States this form has spread over the Union and prevails in every State.

Lastly. The Federal Government, modelled after the State Governments, with its President chosen, through

[1] Massachusetts worked for several years with a small council as the executive power representing the former Crown governor, but in 1780 she came back to the plan of a single governor, while retaining, as she still retains, a council surrounding him.

electors, by the people, its two-chambered legislature, its judges named by the President.[1]

Out of such small beginnings have great things grown.

It would be endless to describe the minor differences in the systems of the thirty-eight States. I will sketch the outlines only, which, as already observed, are in the main the same everywhere.

Every State has—

An executive elective head, the governor.

A number of other administrative officers.

A legislature of two houses.

A system of courts of justice.

Various subordinate local self-governing communities, counties, cities, townships, villages, school districts.

The governor and the other chief officials are not now chosen by the legislature, as was the case under most of the older State Constitutions, but by the people. They are as far as possible disjoined from the legislature. Neither the governor nor any other State official can sit in a State legislature. He cannot lead it. It cannot, except of course by passing statutes, restrain him. There can therefore be no question of any government by ministers who link the executive to the legislature according to the system of the free countries of modern Europe and of the British colonies.

Of these several powers it is best to begin by describing the legislature, because it is by far the strongest and most prominent.

An American State legislature always consists of two houses, the smaller called the Senate, the larger usually called the House of Representatives, though in

[1] One might add another generation at the beginning of this genealogy by deriving the English corporate company from the Roman *collegia*, and a generation at the end by observing how much the constitution of modern Switzerland owes to that of the United States.

six States it is entitled "The Assembly," and in three "The House of Delegates." The origin of this very interesting feature is to be sought rather in history than in theory. It is due partly to the fact that in some colonies there had existed a small governor's council in addition to the popular representative body, partly to a natural disposition to imitate the mother country with its Lords and Commons, a disposition which manifested itself both in colonial days and when the revolting States were giving themselves new Constitutions, for up to 1776 some of the colonies had gone on with a legislature of one house only. Now, however, the need for two chambers has become an axiom of political science, being based on the belief that the innate tendency of an assembly to become hasty, tyrannical, and corrupt, needs to be checked by the co-existence of another house of equal authority. The Americans restrain their legislatures by dividing them, just as the Romans restrained their executive by substituting two consuls for one king. The only States that ever tried to do with a single house were Pennsylvania, Georgia, and Vermont, all of whom gave it up: the first after four years' experience, the second after twelve years, the last after fifty years.[1] It

[1] Upon this subject of the division of the legislature, see Kent's *Commentaries*, i. 208–210; and Story's *Commentaries on the American Constitution*, §§ 548–570. It deserves to be remarked that the Pennsylvanian Constitution of 1786, the Georgian Constitution of 1777, and the Vermont Constitutions of 1786 and 1793, all of which constituted one house of legislature only, provided for a second body called the Executive Council, which in Georgia had the duty of examining bills sent to it by the House of Assembly, and of remonstrating against any provisions they disapproved, and in Vermont was empowered to submit to the Assembly amendments to bills sent up to them by the latter, and in case the Assembly did not accept such amendments, to suspend the passing of the bill till the next session of the legislature. In 1789, Georgia abolished her Council, and divided her legislature into two houses; Pennsylvania did the same in 1790; Vermont in 1836. Both Pennsylvania and Vermont had also a body called the Council of Censors,

is with these trifling exceptions the *quod semper, quod ubique, quod ab omnibus* of American constitutional doctrine.[1]

Both houses are chosen by popular vote, generally[2] in equal electoral districts, and by the same voters, although in a few States there are minor variations as to modes of choice.[3]

The following differences between the rules governing the two Houses are general:—

1. The senatorial electoral districts are always larger, usually twice or thrice as large as the House districts, and the number of senators is, of course, in the same proportion smaller than that of representatives.

2. A senator is usually chosen for a longer term than a representative. In twenty-four States he sits for four years, in one (New Jersey) for three, in eleven for

who may be compared with the Nomothetæ of Athens, elected every seven years, and charged with the duty of examining the laws of the State and their execution, and of suggesting amendments. This body was abolished in Pennsylvania in 1790, but lasted on in Vermont till 1870. All these experiments well deserve the study of constitutional historians.

[1] It ought to be noted as an illustration of the divergences between countries both highly democratic that in the Swiss cantons the legislatures consist of one chamber only. In most of these cantons there is, to be sure, a *referendum* and a small executive council. Another remarkable divergence is that whereas in America, and especially in the West, the tendency is towards "rotation" in office, in Switzerland an official and a member of a legislature is usually continued in his post from one term to another, in fact is seldom displaced except for some positive fault. At one time officials were steadily re-elected in Connecticut.

[2] In Connecticut, every town which had members in 1874 still returns two members, whatever its size, and new towns obtain two members when they reach 5000. Thus a great many very small places have two members each, and the State is governed by the representatives of "rotten boroughs." As they form the majority, they have hitherto refused to submit to the people a constitutional amendment for a redistribution of seats on the basis of equal population.

[3] For instance, in Rhode Island every town or city, be it great or small, returns one senator. In Illinois, every district returns one senator and three representatives, but the latter are elected by minority voting.

two, in two (Massachusetts and Rhode Island) for one year only.

3. In most cases the Senate, instead of being elected all at once like the House, is only partially renewed, half its members going out when their two or four years have been completed, and a new half coming in. This gives it a sense of continuity which the House wants.

4. In some States the age at which a man is eligible for the Senate is fixed higher than that for the House of Representatives; and in one (Delaware) he must own freehold land of 200 acres or real or personal estate of the value of £1000. Other restrictions on eligibility, such as the exclusion of clergymen (which still exists in six States, and is of old standing), that of salaried public officials (which exists everywhere), that of United States officials and members of Congress, and that of persons not resident in the electoral district (frequent by law and practically universal by custom), apply to both Houses. In some States this last restriction goes so far that a member who ceases to reside in the district for which he was elected loses his seat *ipso facto*.

I have dwelt in an earlier chapter (Chap. XIV.) on the strength of this local feeling as regards congressional elections, and on the results, to a European eye mostly unfortunate, which it produces. It is certainly no weaker in State elections. Nobody dreams of offering himself as a candidate for a place in which he does not reside, even in new States, where it might be thought that there had not been time for local feeling to spring up. Hence the educated and leisured residents of the greater cities have no chance of entering the State legislature except for the city district wherein they dwell; and as these city districts are those most likely to be in the hands of some noxious and selfish

ring of professional politicians, the prospect for such an aspirant is a dark one. We shall see presently that some of these State legislatures sadly need reform in their methods and their tone. Nothing more contributes to make reform difficult than the inveterate habit of choosing residents only as members. Suppose an able and public-spirited man desiring to enter the Assembly or the Senate of his State and shame the offenders who are degrading or plundering it. He may be wholly unable to find a seat, because in his place of residence the party opposed to his own may hold a permanent majority, and he will not be even considered elsewhere. Suppose a group of earnest men who, knowing how little one man can effect, desire to enter the legislature at the same time and work together. Such a group can hardly arise except in or near a great city. It cannot effect an entrance, because the city has at best very few seats to be seized, and the city men cannot offer themselves in any other part of the State. That the restriction often rests on custom, not on law, makes the case more serious. A law can be repealed, but custom has to be unlearned; the one may be done in a moment of happy impulse, the other needs the teaching of long experience applied to receptive minds.

The fact is, that the Americans have ignored in all their legislative as in many of their administrative arrangements, the differences of capacity between man and man. They underrate the difficulties of government and overrate the capacities of the man of common sense. Great are the blessings of equality; but what follies are committed in its name!

The unfortunate results of this local sentiment have been aggravated by the tendency to narrow the election

areas, allotting one senator or representative to each district. Under the older Constitution of Connecticut, for instance, the twelve senators were elected out of the whole State by a popular vote. Now (Amdts. of A.D. 1828) the twenty-four senators are chosen by districts, and the Senate is to-day an inferior body, because then the best men of the whole State might be chosen, now it is possible only to get the leading men of the districts. In Massachusetts, under the Constitution of 1780, the senators were chosen by districts, but a district might return as many as six senators: the Assembly men were chosen by towns,[1] each corporate town having at least one representative, and more in proportion to its population, the proportion being at the rate of one additional member for every 275 ratable polls. In 1836 the scale of population to representatives was raised, and a plan prescribed (too complicated to be here set forth) under which towns below the population entitling them to one representative, should have a representative during a certain number of years out of every ten years, the census being taken decennially. Thus a small town might send a member to the Assembly for five years out of every ten, choosing alternate years, or the first five, or the last five, as it pleased. Now, however (Amdts. of A.D. 1857), the State has been divided into forty Senatorial districts, each of which returns one senator only, and into 175 Assembly districts, returning, one, two, or, in a few cases, three representatives each. The composition of the legislature has declined ever since this change was made. The area of choice being smaller, inferior

[1] A town or township means in New England, and indeed generally in the United States, a small rural district, as opposed to a city. It is a community which has not received representative municipal government.—See Chapter XLVIII. *post.*

men are chosen; and in the case of the Assembly districts which return one member, but are composed of several small towns, the practice has grown up of giving each town its turn, so that not even the leading man of the district, but the leading man of the particular small community whose turn has come round, is chosen to sit in the Assembly.

Universal manhood suffrage, subject to certain disqualifications in respect of crime (including bribery) and of the receipt of poor law relief, which prevail in many States—in eight States no pauper can vote—is the rule in nearly all the States. A property qualification was formerly required in many, but now exists only in Rhode Island, where the possession of real estate valued at $134, or the payment of a tax of at least $1 is required from all citizens not natives of the United States.[1] Four other States (Delaware, Massachusetts, Pennsylvania, and Tennessee) require the voter to have paid some State or county tax (Massachusetts and Tennessee call it a poll tax); but if he does not pay it, his party usually pay it for him, so the restriction is of little practical importance. Massachusetts also requires that he shall be able to read the State Constitution in English, and to write his name (Amdt. of 1857), Connecticut, that he shall be able to read any section of the Constitution or of the statutes, and shall sustain a good moral character (Amdts. of 1855 and 1845).[2] So far as I have been able to

[1] Rhode Island has, since the above was in print, abolished this requirement by a constitutional amendment. There were about 25,000 persons whom it had excluded. Eight constitutions forbid the imposition of any property qualification.

[2] The Constitution of Colorado, 1876, allows its legislature to prescribe an educational qualification for electors, but no such law is to take effect prior to A.D. 1890. Florida by its Constitution of 1868 directed its legislature to prescribe such qualifications, which, however, were not to apply till after 1880, nor to any person who might then be already a voter. In the Constitution of 1886 I find no such provision.

ascertain, this educational test is of little practical consequence. In Massachusetts it does not seem to be generally enforced, perhaps because the party managers on both sides agree not to trouble voters about it. Of course certain terms of residence within the United States, in the particular State, and in the voting districts, are also prescribed: these vary greatly from State to State, but are usually short.

The suffrage is generally the same for other purposes as for that of elections to the legislature, and is in every State confined to male inhabitants. In a few States, however, women are permitted to vote at school district and in one at municipal elections,[1] and in these no distinction is made between married and unmarried women; nor has it been attempted, in the various constitutional amendments framed to give political suffrage to women, but hitherto always rejected by the people, to draw such a distinction, which would indeed be abhorrent to the genius of American law.[2]

It is important to remember that, by the Constitution of the United States, the right of suffrage in Federal or national elections (*i.e.* for presidential electors and members of Congress) is in each State that which the State confers on those who vote at the election of its more numerous House. Thus there might exist great differences between one State

[1] On the other hand, the Constitutions of Alabama and Mississippi forbid any educational qualification to be imposed. It is curious, yet easily explicable, that two of the most ignorant States should prohibit what two of the best educated States (Massachusetts and Connecticut) expressly prescribe. The safeguard is applied where it is least, and forbidden where it is most, needed. In Alabama and Mississippi it would have excluded most of the negroes and many of the poor whites.

[2] Minnesota and Colorado give the school vote to women by their Constitutions; Massachusetts has done it by statute. Kansas has very recently (1888) conferred the municipal franchise.

and another in the free bestowal of the Federal franchise. That such differences are at present insignificant is due, partly to the prevalence of democratic theories of equality over the whole Union, partly to the provision of the fourteenth amendment to the Federal Constitution, which reduces the representation of a State in the Federal House of Representatives, and therewith also its weight in a presidential election, in proportion to the number of adult male citizens disqualified in that State. As a State desires to have its full weight in national politics, it has a strong motive for the widest possible enlargement of its Federal franchise, and this implies a corresponding width in its domestic franchise.

The number of members of the legislature varies greatly from State to State. Delaware, with nine senators, has the smallest Senate, Illinois, with fifty-one, the largest. Delaware has also the smallest House of Representatives, consisting of twenty-one members; while New Hampshire, a very small State, has the largest with 321. The New York houses number 32 and 128 respectively, those of Pennsylvania 50 and 201, those of Massachusetts 40 and 240. In the Western and Southern States the number of representatives rarely exceeds 120.

As there is a reason for everything in the world, if one could but find it out, so for this difference between the old New England States and those newer States which in many other points have followed their precedents. In the New England States local feeling was and is intensely strong, and every little town wanted to have its member. In the West and South, local divisions have had less natural life; in fact, they are artificial divisions rather than genuine communities that arose

spontaneously. Hence the same reason did not exist in the West and South for having a large Assembly; while the distrust of representatives, the desire to have as few of them as possible and pay them as little as possible, have been specially strong motives in the West and South, as also in New York and Pennsylvania, and have caused a restriction of numbers.

In all States the members of both Houses receive salaries, which in some cases are fixed at an annual sum of from $150 (Maine) to $1500 (New York), the average being $500 (£100). More frequently, however, they are calculated at so much for every day during which the session lasts, varying from $1 (in Rhode Island) to $8 (in California and Nevada) per day (4s. 2d. to £1 : 13 : 4), besides a small allowance, called mileage, for travelling expenses. These sums, although unremunerative to a man who leaves a prosperous profession or business to attend in the State capital, are an object of such desire to many of the representatives of the people, that the latter have thought it prudent to restrict the length of the legislative sessions, which now stand generally limited to a fixed number of days, varying from forty days in Georgia, Nebraska, and Oregon, to 150 days in Pennsylvania. The States which pay by the day are also those which limit the session. Some States secure themselves against prolonged sessions by providing that the daily pay shall diminish, or shall absolutely cease and determine, at the expiry of a certain number of days, hoping thereby to expedite business and check inordinate zeal for legislation.[1]

[1] These limitations on payment are sometimes, where statutory, repealed for the occasion. In the Swiss Federal Assembly a member receives pay (16s. per diem) only for those days on which he answers to his name on the roll call.

It was formerly usual for the legislature to meet annually, but the experience of bad legislation and over legislation has led to fewer as well as shorter sittings; and sessions are now biennial in all States but six: viz. Massachusetts, Connecticut, Rhode Island, New York, New Jersey, South Carolina, all of them old States. In these the sessions are annual, save in that odd little nook Rhode Island, which still convokes her legislature every May at Newport, and afterwards holds an adjourned session at Providence, the other chief city of the commonwealth. There is, however, in nearly all States a power reserved to the governor to summon the Houses in extraordinary session should a pressing occasion arise, but the provisions for daily pay do not usually apply to these extra sessions.[1]

Bills may originate in either House, save that in nineteen States money bills must originate in the House of Representatives, a rule for which, in the present condition of things, when both Houses are equally directly representative of the people and chosen by the same electors, no sufficient ground appears. It is a curious instance of the wish which animated the framers of the first Constitutions of the original thirteen States to reproduce the details of the English Constitution that had been deemed bulwarks of liberty. The newer States borrowed it from their elder sisters, and the existence of a similar provision in the Federal Constitution has no doubt helped to perpetuate it in all the States. But there is a reason for it in Congress, the Federal Senate not being directly representative of equal numbers of citizens, which is not found in the State legislatures: it is in these last a mere survival of no

[1] Some of the biennially-meeting legislatures are apt to hold adjourned sessions in the off years.

present functional value. Money bills may, however, be amended or rejected by the State Senates like any other bills, just as the Federal Senate amends money bills brought up from the House.

In one point a State Senate enjoys a special power, obviously modelled on that of the English House of Lords and the Federal Senate. It sits as a court under oath for the trial of State officials impeached by the House.[1] Like the Federal Senate, it has in many States the power of confirming or rejecting appointments to office made by the governor. When it considers these it is said to "go into executive Session." The power is an important one in those States which allow the governor to nominate the higher judges. In other respects the powers and procedure of the two Houses of a State legislature are identical;[2] except that, whereas the lieutenant-governor of a State is generally *ex officio* president of the Senate, with a casting vote therein, the House always chooses its own Speaker. The legal quorum is usually fixed, by the Constitution, at a majority of the whole number of members elected,[3] though a smaller number may adjourn and compel the attendance of absent members. Both Houses do most of their work by committees, much after the fashion of Congress,[4] and the committees are in both usually

[1] In New York impeachments are tried by the Senate and the judges of the Court of Appeal sitting together: in Nebraska by the judges of the Supreme court.

[2] Here and there one finds slight differences, as, for instance, in Vermont the power decennially to propose amendments to the Constitution belongs to the Senate, though the concurrence of the House is needed. However, I do not attempt in this summary to give every detail of every Constitution, but only a fair general account of what commonly prevails, and is of most interest to the student of comparative politics.

[3] So thirty-two constitutions. Four fix the quorum at two-thirds, and two specify a number.

[4] See, as to the committees of Congress, Chapter XV. in Vol. I. Some

chosen by the Speaker (in the Senate by the President), though it is often provided that the House (or Senate) may on motion vary their composition.[1] Both Houses sit with open doors, but in most States the Constitution empowers them to exclude strangers when the business requires secrecy.

The State governor has of course no right to dissolve the legislature, nor even to adjourn it unless the Houses, while agreeing to adjourn, disagree as to the date. Such control as the legislature can exercise over the State officers by way of inquiry into their conduct is generally exercised by committees, and it is in committees that the form of bills is usually settled and their fate decided, just as in the Federal Congress. The proceedings are rarely reported. Sometimes when a committee takes evidence on an important question reporters are present, and the proceedings more resemble a public meeting than a legislative session. It need scarcely be added that neither House separately, nor both Houses acting together, can control an executive officer otherwise than either by passing a statute prescribing a certain course of action for him, which if it be in excess of their powers will be held unconstitutional and void, or by withholding the appropriations necessary to enable him to carry out the course of action he proposes to adopt. The latter

constitutions provide that no bill shall pass unless it has been previously referred to and considered by a committee.

[1] In Massachusetts there were in 1881 six standing committees of the Senate, ten of the House, twenty-five joint standing committees, and six joint special committees of both Houses. In Pennsylvania there were in 1887 twenty-nine standing committees of the Senate, thirty-four of the House. In Indiana there were in 1887 thirty-seven standing committees of the House, and four joint standing committees of House and Senate. In Minnesota in 1886 there were thirty-two standing committees of the Senate, thirty-four of the House, and two joint standing committees.

method, where applicable, is the more effective, because it can be used by a bare majority of either House, whereas a bill passed by both Houses may be vetoed by the governor, a point so important as to need a few words.

Four States, three of them original States, vest legislative authority in the legislature alone. These are Rhode Island, Delaware, North Carolina, and Ohio. All the rest require a bill to be submitted to the governor, and permit him to return it to the legislature with his objections. If he so returns it, it can only be again passed "over the veto" by something more than a bare majority. To so pass a bill over the veto there is required—

In two States a majority of three-fifths in each House.

In twenty-three States a majority of two-thirds in each House.

In nine States a majority in each House of all the members elected to that House.

Here, therefore, as in the Federal Constitution, we find a useful safeguard against the unwisdom or misconduct of a legislature, and a method provided for escaping, in extreme cases, from those deadlocks which the system of checks and balances tends to occasion.

I have adverted in a preceding chapter to the restrictions imposed on the legislatures of the States by their respective Constitutions. These restrictions, which are numerous, elaborate, and instructive, take two forms—

I. Exclusions of a subject from legislative competence, *i.e.* prohibitions to the legislature to pass any law on certain enumerated subjects. The most important classes of prohibited statutes are—

Statutes inconsistent with democratic principles, as,

for example, granting titles of nobility, favouring one religious denomination, creating a property qualification for suffrage or office.

Statutes against public policy, *e.g.* tolerating lotteries, impairing the obligation of contracts, incorporating or permitting the incorporation of banks, or the holding by a State of bank stock.[1]

Statutes special or local in their application, a very large and increasing category, the fulness and minuteness of which in many Constitutions show that the mischiefs arising from improvident or corrupt special legislation must have become alarming. The list of prohibited subjects in the Constitution of Missouri of 1875 is the most complete I have found.[2]

Statutes increasing the State debt beyond a certain limited amount, or permitting a local authority to increase its debt beyond a prescribed amount, the amount being usually fixed in proportion to the valuation of taxable property within the area administered by the local authority.[3]

II. Restrictions on the procedure of the legislature, *i.e.* directions as to the particular forms to be observed and times to be allowed in passing bills, sometimes all bills, sometimes bills of a certain specified nature. Among these restrictions will be found provisions—

As to the majorities necessary to pass certain bills.

[1] See, for instance, Constitution of Texas of 1876.

[2] Similar lists occur in the constitutions of all the Western and Southern States as well as of some Eastern States (*e.g.* Constitution of Pennsylvania of 1873, Art. iii. § 7; Constitution of New York, amendments of 1874 to Constitution of 1846).

[3] Further information on this head will be found in Chapter XLIII. on State Finance. The local authorities had been usually forbidden by statute to borrow or tax beyond a certain amount, but as they had formed the habit of obtaining dispensations from the State legislatures, the check mentioned in the text has been imposed on the latter.

Sometimes a majority of the whole number of members elected to each House is required, or a majority exceeding a bare majority.

As to the method of taking the votes, *e.g.* by calling over the roll and recording the vote of each member.

As to allowing certain intervals to elapse between each reading of a measure, and for preventing the hurried passage of bills at the end of the session.

As to including in a bill only one subject, and expressing that subject in the title of the bill.

Against re-enacting, or amending, or incorporating, any former Act by reference to its title merely, without setting out its contents.[1]

The two latter classes of provisions might be found wholesome in England, where much of the difficulty complained of by the judges in construing the law arises from the modern habit of incorporating parts of former statutes, and dealing with them by reference.

Where statutes have been passed by a legislature upon a prohibited subject, or where the prescribed forms have been transgressed or omitted, the statute will be held void so far as inconsistent with the Constitution.

Even these multiform restrictions on the State legislatures have not been found sufficient. Bitted and bridled as they are by the Constitutions, they contrive, as will appear in a later chapter, to do plenty of mischief in the direction of private or special legislation.

[1] Indiana and Oregon direct every Act to be plainly worded, avoiding as far as possible technical terms, and Louisiana (Constitution of 1879, § 31) says: "The General Assembly shall never adopt any system or code of laws by general reference to such system or code of laws, but in all cases shall recite at length the several provisions of the laws it may enact."

Although State legislatures have of course no concern whatever with foreign affairs, this is not deemed a reason for abstaining from passing resolutions on that subject. The passion for resolutions is strong everywhere in America, and an expression of sympathy with an oppressed foreign nationality, or of displeasure at any unfriendly behaviour of a foreign power, is not only an obvious way of relieving the feelings of the legislators, but often an electioneering device, which appeals to some section of the State voters. Accordingly such resolutions are common, and, though of course quite irregular, quite innocuous.

Debates in these bodies are seldom well reported, and sometimes not reported at all. One result is that the conduct of members escapes the scrutiny of their constituents; a better one that speeches are generally short and practical, the motive for rhetorical displays being absent. If a man does not make a reputation for oratory, he may for quick good sense and business habits. However, so much of the real work is done in committees that talent for intrigue or "management" usually counts for more than debating power.

CHAPTER XLI

THE STATE EXECUTIVE

THE executive department in a State consists of a governor (in all the States), a lieutenant-governor (in twenty-seven), and of various minor officials. The governor, who, under the earlier Constitutions of most of the original thirteen States, was chosen by the legislature, is now always elected by the people, and by the same suffrage, practically universal, as the legislature. He is elected directly, not, as under the Federal Constitution, by a college of electors. His term of office is, in sixteen States, four years; in two States, three years; in eighteen States, two years; and in two States (Massachusetts and Rhode Island), one year. His salary varies from $10,000 (£2000) in New York and Pennsylvania to $1000 (£200) in Michigan. Some States limit his re-eligibility; but in those which do not there seems to exist no tradition forbidding a third term of office similar to that which has prevailed in the Federal Government since the days of Washington.

The earlier Constitutions of the original States (except South Carolina) associated with the governor an executive council[1] (called in Delaware the Privy Council),

[1] This is another interesting illustration of the disposition to reproduce England. Vermont was still under the influence of English pre-

but these councils have long since disappeared, except in Massachusetts, Maine, and North Carolina, and the governor remains in solitary glory the official head and representative of the majesty of the State. His powers are, however, in ordinary times more specious than solid, and only one of them is of great practical value. He is charged with the duty of seeing that the laws of the State are faithfully administered by all officials and the judgments of the courts carried out. He has, in nearly all States, the power of reprieving and pardoning offenders, but in some this does not extend to treason or to conviction on impeachment (in Vermont he cannot pardon for murder), and in some, other authorities are associated with him in the exercise of this prerogative. He is commander-in-chief of the armed forces of the State, can embody the militia, repel invasion, suppress insurrection.

He appoints some few officials, but seldom to high posts, and in many States his nominations require the approval of the State Senate. Patronage, in which the President of the United States finds one of his most desired and most disagreeable functions, is in the case of a State governor of slight value, because the State offices are not numerous, and the more important and lucrative ones are filled by the direct election of the people. However, in a few States the governor still retains the nomination of the judges. He has in

cedents when it framed its Constitutions of 1786 and 1793. Maine was influenced by Massachusetts. None of the newer Western States has ever tried the experiment of such a council.

New York had originally two Councils, a "Council of Appointment," consisting of the Governor and a Senator from each of the (originally four) districts, and a "Council of Revision," consisting of the Governor, the Chancellor and the judges of the Supreme court, and possessing a veto on statutes. The Governor has now, since the extinction of these two councils, obtained some of the patronage which belonged to the former as well as the veto which belonged to the latter.

many the power of suspending or removing certain officials, usually local officials, from office, upon proof of their misconduct (see Constitution of New York of 1846, Arts. v. and x.) He has the right of requiring information from the executive officials, and is usually bound to communicate to the legislature his views regarding the condition of the commonwealth. He may also recommend measures to them, but does not frame and present bills. In a few States he is directed to present estimates. He has in all the States but four a veto upon bills passed by the legislature.[1] This veto may be overridden by the legislatures in manner already indicated (see p. 99), but generally kills the measure, because if the bill is a bad one, it calls the attention of the people to the fact and frightens the legislature, whereas if the bill be an unobjectionable one, the governor's motive for vetoing it is probably a party motive, and the requisite overriding majority can seldom be secured in favour of a bill which either party dislikes. The use of his veto is, in ordinary times, a governor's most serious duty, and chiefly by his discharge of it is he judged.

Although much less sought after and prized than in "the days of the Fathers," when a State governor sometimes refused to yield precedence to the President of the United States, the governorship is still, particularly in New England, and such great States as New York or Ohio, a post of some dignity, and affords an opportunity for the display of character and talents. It was in his governorship of New York that Mr. Cleveland, for

[1] It deserves to be remarked that neither the Constitution of the Swiss Confederation nor any cantonal constitution vests a veto in any officer. Switzerland seems in this respect more democratic than the American States, while in the amount of authority which the Swiss allow to the executive government over the citizen (as witness the case of the Salvation Army troubles in Canton Bern) they are less democratic.

instance, commended himself to his party, and rose to be President of the United States. Similarly Mr. Hayes was put forward for the Presidency in 1876 because he had been a good governor of Ohio. During the Civil War, when each governor was responsible for enrolling, equipping, officering, and sending forward troops from his State,[1] and when it rested with him to repress any attempts at disorder, much depended on his energy, popularity, and loyalty. In some States men still talk of the "war governors" of those days as heroes to whom the North owed deep gratitude. And since the Pennsylvanian riots of 1877 and those which have subsequently occurred in Cincinnati and Chicago have shown that tumults may suddenly grow to serious proportions, it has in many States become important to have a man of prompt decision and fearlessness in the office which issues orders to the State militia. In most States there is an elective lieutenant-governor who steps into the governor's place if it becomes vacant, and who is usually also *ex officio* President of the Senate, as the Vice-President of the United States is of the Federal Senate. Otherwise he is an insignificant personage, though sometimes a member of some of the executive boards.[2]

The names and duties of the other officers vary from State to State. The most frequent are a secretary of state (in all States), a treasurer (in all), an attorney-general, a comptroller, an auditor, a superintendent of public instruction. Now and then we find a State

[1] Commissions to officers up to the rank of colonel inclusive were usually issued by the governor of the State: the regiment, in fact, was a State product, though the regular Federal army is of course raised and managed by the Federal Government directly.

[2] In States which have no lieutenant-governor, the President of the State Senate usually succeeds if the governor dies or becomes incapable.

engineer, a surveyor, a superintendent of prisons. Some States have also various boards of commissioners, *e.g.* for railroads, for canals, for prisons, for the land office, for agriculture, for immigration. Most of these officials are in nearly all States elected by the people at the general State election. Sometimes, however, they, or some of them, are either chosen by the legislature, or, more rarely, appointed by the governor, whose nomination usually requires the confirmation of the Senate. Their salaries, which of course vary with the importance of the office and the parsimony of the State, seldom exceed $5000 (£1000) per annum and are usually smaller. So, too, the length of the term of office varies. It is often the same as that of the governor, and never exceeds four years, except that in New Jersey, a conservative State, the secretary and attorney-general hold for five years; and in Tennessee the attorney-general who, oddly enough, is appointed by the supreme court of the State, holds for eight.

It has already been observed that the State officials are in no sense a ministry or cabinet to the governor. Holding independently of him, and responsible neither to him nor to the legislature, but to the people, they do not take generally his orders, and need not regard his advice.[1] Each has his own department to administer, and as there is little or nothing political in the work, a

[1] Florida, by her Constitution of 1868, Art. vi. 17, and Art. viii., created a "cabinet of administrative officers," consisting of eight officials, appointed by the governor, with the consent of the Senate, who are to hold office for the same time as the governor, and "assist the governor in the performance of his duties." However, in her Constitution of 1886 she simply provides that "the governor shall be assisted by administrative officers," viz. secretary of state, attorney-general, comptroller, treasurer, superintendent of public instruction, and commissioner of agriculture, all elected by the people at the same time with the governor and for the same term. The council of North Carolina (Constitution of 1868) consists of five officials, who are to "advise the governor

general agreement in policy, such as must exist between the Federal President and his ministers, is not required. Policy rests with the legislature, whose statutes, prescribing minutely the action to be taken by the officials, leave little room for executive discretion. Europeans may best realize the nature of the system by imagining a municipal government in which the mayor, town clerk, health officer, and city architect are all chosen directly by the people, instead of by the common council, and in which every one of these latter officials is for most purposes, and except so far as he needs appropriations of money, independent not only of the mayor, but also of the common council, except in so far as the latter acts by general ordinances—that is to say, acts as a purely legislative and not as an administrative body.[1]

To give a clearer idea of the staff of a State government I will take the great State of Ohio, and give the functions of the officials by whom it is administered.[2]

The executive officials of Ohio are:—

A Governor, elected by the people for two years. His chief duties are to execute the laws, convene the legislature on extraordinary occasions, command the State forces, appoint staff officers and aides-de-camp, grant pardons and reprieves, issue commissions to State and county officers, make a variety of appointments, serve on certain

in the execution of his duty," but they are elected directly by the people. Their position may be compared with that of the Council of India under recent English statutes towards the English Secretary of State for India.

[1] In the Swiss Confederation the Federal Council of Seven consists of persons belonging to different parties, who sometimes speak against one another in the chambers (where they have the right of speech), but this is not found to interfere with their harmonious working as an administrative body.

[2] I abridge this from a useful little book, called the *Ohio Voters' Manual*, by Mr. W. S. Collins, stating the mode of election, duties, and powers of every officer elected at the polls in the State of Ohio.

boards, and remove, with the assent of the Senate, any official appointed by him and it. He is paid $4000 (£800) a year.

A Lieutenant-Governor, elected by the people for two years, salary $800 (£160) a year, with the duty of succeeding to the governor (in case of death or disability), and of presiding in the Senate.

A Secretary of State, elected by the people for two years (along with the governor), salary $2000 (£400) a year, besides sundry fees for copies of documents. His duties are to take charge of laws and documents of the State, gather and report statistics, distribute instructions to certain officers, and act as secretary to certain boards, to serve on the State printing and State library boards, to make an abstract of the votes for candidates at presidential and State elections.

A State Auditor, elected by the people for four years, salary $3000 (£600). Duties—to keep accounts of all moneys in the State treasury, and of all appropriations and warrants, to give warrants for all payments from or into the treasury, to conduct financial communications with county authorities, and direct the attorney-general to prosecute revenue claims, to serve on various financial boards, and manage various kinds of financial business.

A State Treasurer, elected by the people for two years, salary $3000 (£600). Duties—to keep account of all drafts, paying the money into the treasury, and of auditor's warrants for drafts from it, and generally to assist and check the auditor in the supervision and disbursement of State revenues, publishing monthly statements of balances.

A State Attorney-General, elected by the people for two years, salary $1500 (£300) a year, and 3 per cent on all collections made for the State, but total not to exceed $2000 a year in all. Duties —to appear for the State in civil and criminal cases, advise legally the governor and other State officers, and the Assembly, proceed against offenders, enforce performance of charitable trusts, submit statistics of crime, sit upon various boards.

A State Commissioner of Common Schools, elected by the people for three years, salary $2000 (£400) a year. Duties—to visit and advise teachers' institutes, boards of education, and teachers, deliver lectures on educational topics, see that educational funds are legally distributed, prepare and submit annual reports on condition of schools, appoint State board of examiners of teachers.

Three Members of Board of Public Works, elected by the people for three years, one in each year, salary $800 (£160) a year, and travelling expenses, not exceeding $50 a month. Duties —to manage and repair the public works (including canals) of the State, appoint and supervise minor officials, let contracts, present annual detailed report to the governor.

Besides these, the people of the State elect the judges and the clerk of the supreme court. Other officials are either elected by the people in districts, counties, or cities, or appointed by the governor or legislature.

Of the subordinate civil service of a State there is little to be said. It is not large, for the sphere of administrative action which remains to the State between the Federal government on the one side,

and the county, city, and township governments on the other, is not wide. It is ill-paid, for the State legislatures, especially in the West, are parsimonious. It is seldom well-manned, for able men have no inducement to enter it; and the so-called "Spoils System," which has been hitherto applied to State no less than to Federal offices, makes places the reward for political work, *i.e.* electioneering and wirepulling. Efforts are now being made in some States to introduce reforms similar to those begun in the Federal administration, whereby certain walks of the civil service shall be kept out of politics, at least so far as to secure competent men against dismissal on party grounds. Such reforms would in no case apply to the higher officials chosen by the people, for they are always elected for short terms and on party lines.

Every State, except Oregon, which is content to rely on the ordinary law, provides for the impeachment of executive officers, and usually of all such officers, for grave offences. In all, save two, the State House of Representatives is the impeaching body; and in all but New York the State Senate sits as the tribunal, a two-thirds majority being generally required for a conviction. Impeachments are rare in practice.

There is also in many States a power of removing officials, sometimes by the vote of the legislature, sometimes by the governor on the address of both houses, or by the governor alone, or with the concurrence of the Senate. Such removals must of course be made in respect of some offence, or for some other sufficient cause, not from caprice or party motives; and when the case does not seem to justify immediate removal, the governor is sometimes empowered to suspend the officer, pending an investigation of his conduct.

CHAPTER XLII

THE STATE JUDICIARY

THE Judiciary in every State includes three sets of courts:—A supreme court or court of appeal; superior courts of record; local courts; but the particular names and relations of these several tribunals and the arrangements for criminal business vary greatly from State to State. We hear of courts of common pleas, probate courts,[1] surrogate courts, prerogative courts, courts of oyer and terminer, orphans' courts, court of general sessions of the peace and gaol delivery, quarter sessions, hustings' courts, county courts, etc. etc. All sorts of old English institutions have been transferred bodily, and sometimes look as odd in the midst of their new surroundings as the quaint gables of a seventeenth-century house among the terraces of a growing London suburb. As respects the distinction which Englishmen used to deem fundamental, that of courts of common law and courts of equity, there has been great diversity of practice. Most of the original thirteen colonies once possessed separate courts of chancery, and these were maintained for many years after the separation from England, and were imitated in a few of the earlier

[1] Admiralty business is within the exclusive jurisdiction of the Federal courts.

among the new States, such as Michigan, Arkansas, Missouri. In some of the old States, however, the hostility to equity jurisdiction, which marked the popular party in England in the seventeenth century, had transmitted itself to America. Chancery courts were regarded with suspicion, because thought to be less bound by fixed rules, and therefore more liable to be abused by an ambitious or capricious judiciary.[1] Massachusetts, for instance, would permit no such court, though she was eventually obliged to invest her ordinary judges with equitable powers, and to engraft a system of equity on her common law, while still keeping the two systems distinct. Pennsylvania held out still longer, but she also now administers equity, as indeed every civilized State must do in substance, dispensing it, however, through the same judges as those who apply the common law, and having more or less worked it into the texture of the older system. Special chancery courts were abolished in New York, where they had flourished and enriched American jurisprudence by many admirable judgments, by the democratizing constitution of 1846; and they now exist only in a few of the States, chiefly older Eastern or Southern States,[2] which, in judicial matters, have shown themselves more conservative than their sisters in the West. In three States only (New York, North Carolina, and California) has there been a complete fusion of law and equity, although there are several others which have provided that the legislature shall abolish the distinction between the two kinds of pro-

[1] Note that the grossest abuses of judicial power by American judges, such as the Erie Railroad injunctions of Judge Barnard of New York in 1869, were perpetrated in the exercise of equitable jurisdiction. Equity in granting discretion opens a door to indiscretion, or to something worse.

[2] Distinct chancery courts remain in Delaware, New Jersey, Vermont, Tennessee, Alabama, Mississippi, Michigan.

cedure. Five States provide for the establishment of tribunals of arbitration and conciliation.

The jurisdiction of the State courts, both civil and criminal, is absolutely unlimited, *i.e.* there is no appeal from them to the Federal courts, except in certain cases specified by the Federal Constitution (see above, Chapter XXII.), being cases in which some point of Federal law arises. Certain classes of cases are, of course, reserved for the Federal courts and in some the State courts enjoy a concurrent jurisdiction.[1] All crimes, except such as are punishable under some Federal statute, are justiciable by a State court; and it is worth remembering that in most States there exist much wider facilities for setting aside the verdict of a jury finding a prisoner guilty, by raising all sorts of points of law, than are permitted by the law and practice of England. Such facilities have been and are abused, to the great detriment of the community.

One or two other points relating to law and justice in the States require notice. Each State recognizes the judgments of the courts of a sister State, gives credit to its public acts and records, and delivers up to its justice any fugitive from its jurisdiction charged with a crime. Of course the courts of one State are not bound either by law or usage to follow the reported decisions of those of another State. They use such decisions merely for their own enlightenment, and as some evidence of the common law, just as they use the English law reports. Most of the States have within the last half century made sweeping changes, not only in their judicial system, but in the form of their law. They have revised and codified their statutes, a carefully corrected edition whereof is issued every few years. They have in many instances

[1] See Chapter XXII. *ante*.

adopted codes of procedure, and in some cases have even enacted codes embodying the substance of the common law, and fusing it with the statutes. Such codes, however, have been condemned by the judgment of the abler and more learned part of the profession, as tending to confuse the law and make it more uncertain and less scientific.[1] A warm controversy has lately been raging in New York on the subject. But with the masses of the people the proposal is popular, for it holds out a prospect, unfortunately belied by the result in States which, like California, have tried the experiment, of a system whose simplicity will enable the layman to understand the law, and render justice cheaper and more speedy. A really good code might have these happy effects. But it may be doubted whether the codifying States have taken the steps requisite to secure the goodness of the codes they enact. And there is a grave objection to the codification of State law which does not exist in a country like England or France. So long as the law of a State remains common law, *i.e.* rests upon custom and decisions given by the judges, the law of each State tends to keep in tolerable harmony with that of other States, because each set of judges is enlightened by and disposed to be influenced by the decisions of the Federal courts and of judges in other States. But when the whole law of a State has been enacted in the form of a code all existing divergences between one State and another are sharpened and perpetuated, and new divergences probably created. Hence codification increases the variations of the law between different States, and these

[1] This is perhaps less true of Louisiana, where the civil law of Rome, which may be said to have been the common law of the State, offered a better basis for a code than the English common law does. The Louisiana code is based on the Code Napoleon.

variations may impede business and disturb the ordinary relations of life.

Important as are the functions of the American judiciary, the powers of a judge are limited by the State Constitutions in a manner surprising to Europeans. He is not allowed to charge the jury on questions of fact,[1] but only to state the law. He is sometimes required to put his charge in writing. His power of committing for contempt of court is often restricted. Express rules forbid him to sit in causes wherein he can have any family or pecuniary interest. In one Constitution his punctual attendance is enforced by the provision that if he does not arrive in court within half an hour of the time fixed for the sitting, the attorneys of the parties may agree on some person to act as judge, and proceed forthwith to the trial of the cause. And in California he is not allowed to draw his salary till he has made an affidavit that no cause that has been submitted for decision for ninety days remains undecided in his court.[2]

I come now to three points, which are not only important in themselves, but instructive as illustrating the currents of opinion which have influenced the peoples of the States. These are—

The method of appointing the judges.

Their tenure of office.

Their salaries.

The remarkable changes that have been made in the two former matters, and the strange practice which now prevails in the latter, are full of significance for the student of modern democracy, full of warning for Europe and the British colonies.

[1] A frequent form is that in the Constitution of Tennessee of 1870 (Art. vi. § 9)—"Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law."

[2] The Californian judges are said to have contrived to evade this.

In colonial days the superior judges were appointed by the Governors, except in Rhode Island and Connecticut, where the legislature elected them. When, in and after 1776, the States formed their first Constitutions, four States,[1] besides the two just named, vested the appointment in the legislature, five[2] gave it to the Governor with the consent of the council; Delaware gave it to the legislature and President (=Governor) in joint ballot, while Georgia alone entrusted the election to the people.

In the period between 1812 and 1860, when the tide of democracy was running strong, the function was in several of the older States taken from the Governor or the legislature to be given to the people voting at the polls; and the same became the practice among the new States as they were successively admitted to the Union. Mississippi, in 1832, made all her judges elected by the people. The decisive nature of the change was marked by the great State of New York, which, in her highly democratic Constitution of 1846, transferred all judicial appointments to the citizens at the polls.

At present we find that in twenty-five States, the judges are elected by the people. These include nearly all the Western and Southern States, besides New York, Pennsylvania, and Ohio.

In five States[3] they are elected by the legislature.

In eight States[4] they are appointed by the Governor, subject however to confirmation either by the council, or by the legislature, or by one House thereof.

[1] Virginia, New Jersey, North Carolina, and South Carolina.

[2] Massachusetts, New Hampshire, Pennsylvania, Maryland, New York.

[3] Rhode Island, Vermont, Virginia, South Carolina, Georgia.

[4] Massachusetts, Connecticut, New Hampshire, Delaware, Maine, Mississippi, New Jersey, Louisiana; in the last of which, however, district judges, and in Maine and Connecticut probate judges, are popularly elected.

I may observe that all the thirteen States which do not appoint the judge by popular election either belong to the original thirteen colonies or are States which have been specially influenced by one of those thirteen (as, for instance, Maine was influenced by Massachusetts). It is these older commonwealths that have clung to the less democratic methods of choosing judicial officers; while the new democracies of the West, together with the most populous States of the East, New York and Pennsylvania, States thoroughly democratized by their great cities, have thrown this grave and delicate function into the rude hands of the masses, that is to say, of the wirepullers.

Originally, the superior judges were, in most States, like those of England since the Revolution of 1688, appointed for life, and held office during good behaviour, *i.e.* were removable only when condemned on an impeachment, or when an address requesting their removal had been presented by both houses of the legislature.[1] A judge may now be removed upon such an address in thirty States, a majority of two-thirds in each house being usually required. The salutary provision of the British Constitution against capricious removals has been faithfully adhered to. But the wave of democracy has in nearly all States swept away the old system of life-tenure. Only four now retain it.[2] In the rest a judge is elected or appointed for a term, varying from two years in Vermont to twenty-one years in Pennsylvania. Eight to ten years is the average term prescribed; but a judge is always re-eligible,

[1] The power of impeachment remains but is not often used.

[2] Massachusetts, Rhode Island, New Hampshire, Delaware, all of them among the original thirteen. In New Hampshire and Delaware the judge must retire at seventy years of age. In Florida though the three justices of the supreme court are now (Constitution of 1886) elected by the people, the seven circuit judges are appointed by the governor.

and likely to be re-elected if he be not too old, if he has given satisfaction to the bar, and if he has not offended the party which placed him on the bench.

The salaries paid to State judges of the higher courts range from $8500 (£1700), (chief-justice), in Pennsylvania, and $7000 (£1400) + $2000 (£400) for expenses in New York, to $2000 in Oregon. $4000 to $5000 (£800 to £1000) is the average, a sum which, especially in the greater States, fails to attract the best legal talent. Judges of the inferior courts of course receive salaries proportionately lower. In general the new Western States are the worst paymasters,[1] their population of farmers not perceiving the importance of securing high ability on the bench, and deeming $4000 a larger sum than a quiet-living man can need. The lowness of the scale on which the salaries of Federal judges are fixed confirms this tendency.

Any one of the three phenomena I have described —popular elections, short terms, and small salaries— would be sufficient to lower the character of the judiciary. Popular elections throw the choice into the hands of political parties, that is to say, of knots of wirepullers inclined to use every office as a means of rewarding political services, and garrisoning with grateful partisans posts which may conceivably become of political importance. Short terms oblige the judge to remember and keep on good terms with those who have made him what he is, and in whose hands his fortunes lie. They induce timidity, they discourage independence. And small salaries prevent able men from offering themselves for places whose income is perhaps only one-tenth of what a leading barrister can

[1] Vermont and New Hampshire also pay their supreme court judges only $2500 (£500) and $2700 respectively.

make by private practice. Putting the three sources of mischief together, no one will be surprised to hear that in many of the American States the State judges are men of moderate abilities and scanty learning, inferior, and sometimes vastly inferior, to the best of the advocates who practise before them. It is more hard to express a general opinion as to their character, and particularly as to what is called, even in America where robes are not worn, the "purity of the judicial ermine." Pecuniary corruption seems, so far as a stranger can ascertain, to be rare, perhaps very rare, but there are other ways in which sinister influences can play on a judge's mind, and impair that confidence in his impartiality which is almost as necessary as impartiality itself. And apart from all questions of dishonesty or unfairness, it is an evil that the bench should not be intellectually and socially at least on a level with the bar.

The mischief is serious. But I must own that it is smaller than a European observer is prepared to expect. In most of the twenty-four States where this system prevails the bench is respectable; and in some it is occasionally adorned by men of the highest eminence. Not even in California or Arkansas are the results so lamentable as might have been predicted. New York City, under the dominion of the Tweed Ring, has afforded the only instance of flagrant judicial scandals; and even in those loathsome days, the Court of Appeals at Albany, the highest tribunal of the State, retained the respect of good citizens. Justice in civil causes between man and man is fairly administered over the whole Union, and the frequent failures to convict criminals, or punish them when convicted, are attributable not so much either to weakness or to partiality on a judge's part as to the

tenderness of juries and the inordinate delays and complexity of criminal procedure.

Why then have sources of evil so grave failed to produce correspondingly grave results? Three reasons may be suggested:—

One is the co-existence in every State of the Federal tribunals, presided over by judges who are usually capable and always upright. Their presence helps to keep the State judges, however personally inferior, from losing the sense of responsibility and dignity which befits the judicial office, and makes even party wire-pullers ashamed of nominating as candidates notoriously incapable or tainted men.

Another is the influence of a public opinion which not only recognizes the interest the community has in an honest administration of the law, but recoils from turpitude in a highly placed official. The people act as a check upon the party conventions that choose candidates, by making them feel that they damage themselves and their cause if they run a man of doubtful character, and the judge himself is made to dread public opinion in the criticisms of a very unreticent press. Democratic theory, which has done a mischief in introducing the elective system, partly cures it by subjecting the bench to a light of publicity which makes honesty the safest policy. Whatever passes in court is, or may be, reported. The judge must give his reasons for every judgment he delivers.

Lastly, there is the influence of the bar, a potent influence even in the present day, when its *rôle* is less brilliant than in former generations. The local party leaders who select the candidates and "run" the conventions are in some States mostly lawyers themselves, or at least in close relations with some

leading lawyers of the State or district. Now lawyers have not only a professional dislike to the entrusting of law to incapable hands, the kind of dislike which a skilled bricklayer has to seeing walls badly laid, but they have a personal interest in getting fairly competent men before whom to plead. It is no pleasure to them to have a judge so ignorant or so weak that a good argument is thrown away upon him, or that you can feel no confidence that the opinion given to a client, or a point of law which you think clear, will be verified by the decision of the court. Hence the bar often contrives to make a party nomination for judicial office fall, not indeed on a leading barrister, because a leading barrister will not accept a place with $4000 a year, when he can make $14,000 by private practice, but on as competent a member of the party as can be got to take the post. Having constantly inquired, in every State I visited wherein the system of popular elections to judgeships prevails, how it happened that the judges were not worse, I was usually told that the bar had interposed to prevent such and such a bad nomination, or had agreed to recommend such and such a person as a candidate, and that the party had yielded to the wishes of the bar. Occasionally, when the wire-pullers are on their good behaviour, or the bar is exceptionally public-spirited, a person will be brought forward who has no claims except those of character and learning. But it is perhaps more common for the lawyers to put pressure on one or other party in nominating its party candidates to select capable ones. Thus when a few years ago the Republicans of New York State were running bad candidates, some leading Republican lawyers persuaded the Democrats to nominate better men, and thereupon issued an appeal in favour of

these latter, who were accordingly carried at the ensuing election.

These causes, and especially the last, go far to nullify the malign effects of popular election and short terms. But they cannot equally nullify the effect of small salaries. Accordingly, while corruption and partiality are uncommon among State judges, inferiority to the practising counsel is a conspicuous and frequent fault.

One is obliged to speak generally, because there are differences between the various States too numerous to be particularized. In some, especially in the North-West, the tone of the party managers and of the bar is respectable, and the sense of common interest makes everybody wish to have as good men as the salaries will secure. In others there are traditions which even unscrupulous wirepullers fear to violate. Pennsylvania, for instance, though her legislature and her city governments have been impure, and little under the influence of the bar, still generally elects capable judges.[1] The scandals of Barnard and Cardozo[2] were due to the fact that the vast and ignorant population of New York was dominated by a gang of professional politicians who neither feared the good citizens nor regarded the bar.

As there are institutions which do not work as well as they theoretically ought, so there are happily others which work better. The sale of offices under the old monarchy of France, the sale of commissions in the English army till 1871, the sale of advowsons and next presentations to livings which still exists in the Anglican Church Establishment, the bribery of electors which has only the other day been extinguished in

[1] Pennsylvania, it is fair to say, pays better than most States, and gives long terms, so she can obtain better men than most.

[2] The notorious Tweed Ring judges of twenty years ago.

England, were or are all of them indefensible in theory, all mischievous in practice. But none of them did so much harm as a philosophical observer would have predicted, because other causes were at work to mitigate and minimize their evils.

During the last few years there has been a distinct change for the better. Some States which had vested the appointment of judges in the legislature, like Connecticut, or in the people, like Mississippi, have by recent constitutional amendments or new Constitutions, given it to the governor with the consent of the legislature or of one house thereof.[1] Others have raised the salaries, or lengthened the terms of the judges, or, like New York, have introduced both these reforms. Within the decade ending December 1886, though twenty-eight States altered their Constitutions, no one, except Florida, took appointments from legislature or governor to entrust them to popular vote. In this point at least, the tide of democracy which went on rising for so many years, seems to have begun to recede from the high-water mark of 1840-1860. The American people, if sometimes bold in their experiments, have a fund of good sense which makes them watchful of results, and not unwilling to reconsider their former decisions.

[1] In Connecticut the change was made at the instance of the Bar Association of the State, which had seen with regret that the dominant party in the State legislature was placing inferior men on the bench.

CHAPTER XLIII

STATE FINANCE

THE financial systems in force in the several States furnish one of the widest and most instructive fields of study that the whole range of American institutions presents to a practical statesman, as well as to a student of comparative politics. It is much to be wished that some person equipped with the necessary special knowledge could survey them with a philosophic eye, and present the results of his survey in a concise form. From such an attempt I am interdicted not only by the want of that special knowledge, but by the compass of the subject, and the difficulty of obtaining in Europe adequate materials. These materials must be sought not only in the Constitutions of the States, but even more in their statutes, and in the reports presented by the various financial officials, and by the special commissions occasionally appointed to investigate the subject or some branch of it. All I can here attempt is to touch on a few of the more salient features of the topic, and to cull from the Constitutions some illustrations of the dangers feared and the remedies desired by the people of the States. What I have to say falls under the heads of—

Purposes for which State revenue is required.

Forms of taxation.

Exemptions from taxation.

Methods of collecting taxes.

Limitations imposed on the power of taxing.

State indebtedness.

Restrictions imposed on the borrowing power.

I. The budget of a State is seldom large, in proportion to the wealth of its inhabitants, because the chief burden of administration is borne not by the State, but by its subdivisions, the counties, and still more the cities and townships. The chief expenses which a State undertakes in its corporate capacity are—(1) The salaries of its officials, executive and judicial, and the incidental expenses of judicial proceedings, such as payments to jurors and witnesses; (2) the State volunteer militia; (3) charitable and other public institutions, such as State lunatic asylums, State universities, agricultural colleges, etc.;[1] (4) grants to schools;[2] (5) State prisons, comparatively few, since the prison is usually supported by the county; (6) State buildings and public works, including, in a few cases, canals; (7) payment of interest on State debts. Of the whole revenue collected in each State under State taxing laws, a comparatively small part is taken by the State itself and applied to State purposes.[3] In 1882

[1] The Constitutions of Louisiana and Georgia allow State revenue to be applied to the supplying of wooden legs and arms to ex-Confederate soldiers.

[2] All or nearly all States have set apart for the support of schools and of other educational or benevolent institutions, sometimes including universities, a considerable fund derived from the sale of Western lands granted for the purpose by the Federal government about twenty-five years ago, and derived in some cases also from lands appropriated originally by the State itself to these objects.

[3] In the State of Connecticut (population in 1883 about 650,000) the total revenue raised by taxation in 1883-84 was $8,524,776 (£1,800,000), which was collected by and for the following authorities and purposes :—

The State	$1,462,328
Counties	1,131,766
Towns	2,808,682
Cities and boroughs . .	1,636,957
School districts . . .	1,485,043

only seven States raised for State purposes a revenue exceeding $2,000,000. In that year the revenue of New York was $7,690,416 (pop. in 1882 about 5,200,000). In 1886-87 the revenue of Pennsylvania was $7,646,147 (pop. about 4,700,000). These are small sums when compared either with the population and wealth of these States, or with the revenue raised in them by local authorities for local purposes. They are also small in comparison with what is raised by indirect taxation for Federal purposes.

II. The Federal government raises its revenue by indirect taxation, and by duties of customs and excise,[1] though it has the power of imposing direct taxes, and used that power freely during the War of Secession. State revenue, on the other hand, arises almost wholly from direct taxation, since the Federal Constitution forbids the levying of import or export duties by a State, except with the consent of Congress, and directs the produce of any such duties as Congress may permit to be paid into the Federal treasury. The chief tax is in every State a property tax, based on a valuation of property, and generally of all property, real and personal, within the taxing jurisdiction.

The valuation is made by officials called appraisers or assessors, appointed by the local communities, though under general State laws.[2] It is their duty to put a value on all taxable property; that is, speaking generally, on all property, real and personal, which they can discover or trace within the area of their authority. As the contribution, to the revenues of the State or county, leviable within that area is proportioned to the amount

[1] Stamp duties were also resorted to during the Civil War, but at present none are levied by the National government.

[2] The account in the text does not, of course, claim to be true in all particulars for every State, but only to represent the general usage.

and value of taxable property situate within it, the local assessors have, equally with the property owners, an obvious motive for valuing on a low scale, for by doing so they relieve their community of part of its burden. The State is accordingly obliged to check and correct them by creating what is called a Board of Equalization, which compares and revises the valuations made by the various local officers, so as to secure that taxable property in each locality is equally and fairly valued, and made thereby to bear its due share of public burdens. Similarly a county has often an equalization board to supervise and adjust the valuations of the towns and cities within its limits.[1] However, the existence of such boards by no means overcomes the difficulty of securing a really equal valuation, and the honest town which puts its property at a fair value suffers by paying more than its share. Valuations are generally made at a figure much below the true worth of property. In Connecticut, for instance, the law directs the market price to be the basis, but real estate is valued only at from one-third to two-thirds thereof.[2] Indeed one hears everywhere in America complaints of inequalities arising from the varying scales on which valuers proceed.

[1] See, for a specimen of the provisions for equalization boards, the Constitution of California, Art. xiii. § 9, in the Appendix to this volume.

[2] The special commission on taxation in Connecticut in their recent singularly clear and interesting report (1887) observe :—"One great defect in the practical execution of our tax laws consists in inequalities of assessment and valuation. This shows itself especially as between the different towns. . . . It is notorious that in few, if any, towns do the assessors value real estate at what they think it is fairly worth. On the contrary, they generally first make this appraisal of its actual value, and then put it in the list at a certain proportion of such appraisal, varying from 33⅓ to 75 per cent. Similar reductions are made in valuing personal property, though with less uniformity, and so perhaps with more injustice" (p. 8). "Household furniture above $500 in value constitutes an item of only $9500 in one of our cities, while a neighbouring town of not more than half the population returns $12,900" (p. 16).

A still more serious evil is the fact that so large a part of taxable property escapes taxation. Lands and houses cannot be concealed; cattle and furniture can be discovered by a zealous tax officer. But a great part, often far the largest part of a rich man's wealth, consists in what the Americans call "intangible property," notes, bonds, book debts, and Western mortgages.[1] At this it is practically impossible to get, except through the declaration of the owner; and though the owner is required to present his declaration of taxable property upon oath, he is apt to omit this kind of property. The Connecticut commissioners report that "the proportion of these intangible securities to other taxable property has steadily declined from year to year. In 1855 it was nearly 10 per cent of the whole, in 1865 about 7½ per cent, in 1875 a little over 5 per cent, and in 1885 about 3¾ per cent. Yet during the generation covered by these statistics the amount of State railroad and municipal bonds, and of Western mortgage loans has very greatly increased, and our citizens have, in every town in the State, invested large sums in them. Why then do so few get into the tax list? The terms of the law are plain, and the penalties for its infringement are probably as stringent as the people will bear. . . . The truth is that no system of tax laws can ever reach directly the great mass of intangible property. It is not to be seen, and its possession, if not voluntarily disclosed, can in most cases be only the subject of con-

[1] The difficulty does not arise with stock or shares even when held in a company outside a State, because all States now tax corporations or companies within their jurisdiction, and the principle is generally (though not universally) adopted, that where stocks in a corporation outside the State have been so taxed, they shall not be again taxed in the hand of the holder of the stock, who may reside within the State. State laws and tax assessors can in each State succeed in reaching the property of the corporation itself.

jecture. The people also in a free government are accustomed to reason for themselves as to the justice and validity of the laws, and too apt to give themselves the benefit of the doubt when they have in any way the power to construe it for themselves. Such a power is practically given in the form of oath used in connection with our tax lists, since it refers only to such property of the parties giving them in as is taxable according to their best knowledge, remembrance, or belief. The man who does not believe that a western farm loan or foreign railroad bond (*i.e.* bond of a company outside the State) ought to be taxed, is too often ready to swear that to the best of his belief it is not liable to taxation. . . . As the law stands, it may be a burden on the conscience of many, but it is a burden on the property of few, not because there are few who ought to pay, but because there are few who can be made to pay. Bonds and notes held by an individual are for the most part concealed from the assessors, nor do they in most towns make much effort to ascertain their existence.[1] The result is that a few towns, a few estates, and a few persons of a high sense of honesty, bear the entire weight of the tax. Such has been the universal result of similar laws elsewhere."

A comparison of the tax lists with the probate records convinced the commissioners that, whereas in 1884 more than a third of the whole personal property assessed in the State of Connecticut escaped taxes, the proportion not reached by taxation was in 1886 much greater; and induced them to recommend that "all the items of intangible property ought to be struck out of

[1] "A person, formerly assessor in one of our leading cities, reported that he had made efforts when in office to get this kind of property into the 'grand list,' and succeeded during his last two years in finding out and adding over $200,000 of it; but he adds, 'That may have had something to do with my defeat when election came around.'"

the tax list." The probate inventories of the estates of deceased persons, and the last returns made to the tax assessors by those persons, "show, to speak of it mildly, few points of contact." Connecticut is a commonwealth in most respects above the average. In every part of the country one hears exactly the same.[1] The tax returns sent in are rarely truthful; and not only does a very large percentage of property escape its lawful burdens, but "the demoralization of the public conscience by the frequent administration of oaths, so often taken only to be disregarded, is an evil of the greatest magnitude. Almost any change would seem to be an improvement."[2]

There is probably not a State in the Union of which the same thing might not be said. In Ohio, for instance, the Governor remarks in a special message of April

[1] The West Virginian tax commission, in 1884, says, "At present all taxes from invisible property come from a few conspicuously conscientious citizens, from widows, executors, and from guardians of the insane and infants; in fact, it is a comparatively rare thing to find a shrewd trader who gives in any considerable amount of notes, stocks, or money. The truth is, things have come to such a condition in West Virginia that, as regards paying taxes on this kind of property, it is almost as voluntary and is considered pretty much in the same light as donations to the neighbourhood church or Sunday school."—Quoted by the Connecticut commissioners, who add that the New Hampshire commission of 1878 report that in that State three-fourths of all personal property is not reached by the assessors. Reference may also be made to the Report of the Tax Commission of Baltimore, 1886; and to the supplementary Report of one member of the Maryland Tax Commission, Mr. Richard T. Ely, in which a great deal of instructive evidence as to the failure in various States of the efforts made to tax intangible property has been diligently collected and set forth (Baltimore, 1888).

[2] Judge Foster, in the case of *Kirtland* v. *Hotchkiss*, 42 Conn. Rep., p. 449. So Mr. David A. Wells, in his report as Special Tax Commissioner to the New York Legislature, says: "Oaths as a matter of restraint or as a guarantee of truth in respect to official statements have in great measure ceased to be effectual; or in other words, perjury, direct or constructive, has become so common as to almost cease to occasion notice. This is the all but unanimous testimony of officials who have of late had extensive experience in the administration of both the national and State revenue laws."

1887: "The great majority of the personal property of this State is not returned, but entirely and fraudulently withheld from taxation. The idea seems largely to prevail that there is injustice and inequality in taxation, and that there is no harm in cheating the State, although to do so a false return must be made and perjury committed. This offence against the State and good morals is too frequently committed by men of wealth and reputed high character, and of corresponding position in society." In New York the Governor said (Annual Message of 1886): "For years the State assessors have directed public attention to the fact that the personalty of the tax-payers was escaping assessment, yet there has been a shrinkage from 1871 to 1884 of $107,184,371 (£21,436,874)." That is to say, notwithstanding the immense increase of personal property in New York during these thirteen years, personal property stood assessed at £21,000,000 less in 1884 than in 1871.

I have dwelt upon these facts, not only because they illustrate the difficulties inherent in a property tax, but also because they help to explain the occasional bitterness of feeling among the American farmers as well as the masses against capitalists, much of whose accumulated wealth escapes taxation, while the farmer who owns his land, as well as the working man who puts his savings into the house he lives in, is assessed and taxed upon this visible property. We may, in fact, say of most States, that under the present system of taxation the larger is the city the smaller is the proportion of personalty reached by taxation (since concealment is easier in large communities), and the richer a man is the smaller in proportion to his property is the contribution he pays to the State. Add to this that the rich man bears less, in proportion to his

income, of the burden of indirect taxation, since the protective tariff raises the price not merely of luxuries but of all commodities, except some kinds of food.[1]

Besides the property tax, which is the main source of revenue, the States often levy taxes on particular trades or occupations,[2] sometimes in the form of a

[1] An experienced Massachusetts publicist writes to me *apropos* of the passage in the text: "If one State compels a man to make a full declaration of his personal property for taxation and another does not there will be a tendency for capital to flow from the former to the latter. In Vermont, for instance, a law has been passed requiring every person under penalty to make sworn returns of his moveable property, and the result is that capital seems to be leaving that State.

"In New York the law taxes personal property, but if a person makes no return the assessors are instructed to 'doom' him according to the best of their knowledge and belief; and the amount becomes a matter of 'trade.' Returns are practically made only by trustees and corporations, not by capitalists. It is a case of bad law tempered by violation.

"In Massachusetts the practice in each town depends mainly upon the assessors. In Boston the chief office having resolved to let no one escape, has for twenty years gone on increasing the assessment each year till the victim makes a return. At first, men had some scruple about leaving the city before 1st May (the date of residence when taxes are assessed), but these were soon overcome, and now nearly all the capitalists have country places where they retire at a still inclement season, and are received with open arms by the local assessors, who accept just what they choose to pay, while their political influence, their taxes, and their public donations are lost to the city. Occasionally the assessors in a country town take it into their heads to apply the screw after the fashion of the city authority, and then there is a fine turmoil. As the rich men generally live in one quarter of the (country) town, the next step is to apply to the legislature to get the town divided, and the vicinity of Boston is thus being gradually cut up into small pieces."

[2] North Carolina empowers its legislature to tax all trades, professions, and franchises. Arkansas in 1868 (Article x. § 17) directed its general assembly to "tax all privileges, pursuits, and occupations that are of no real use to society," adding that all others shall be exempt. But having apparently found it hard to determine which occupations are useless, she dropped the direction in her Constitution of 1874, and now merely empowers the taxation of "hawkers, pedlers, ferries, exhibitions, and privileges."

The persons or things on whom licence taxes or occupation taxes may be imposed are the following, some being mentioned in one State Constitution, some in another—Pedlers, hawkers, auctioneers, brokers, pawnbrokers, merchants, commission merchants, "persons selling by sample," showmen, jugglers, innkeepers, toll bridges, ferries, telegraphs, express

licence tax, taxes on franchises enjoyed by a corporation, taxes on railroad stock, or (in a few States) taxes on collateral inheritances. Comparatively little resort is had to the so-called "death-duties," *i.e.* probate, legacy, and succession duties, nor is much use made of an income tax. Five States, however, authorize it. As regards poll taxes there is much variety of practice. Some State Constitutions (*e.g.* Ohio) forbid such an impost, as "grievous and oppressive"; others direct it to be imposed, and about one-half do not mention it. Where it exists, there is sometimes a direction that it shall be applied to schools or some other specified useful purpose, such as poor relief, so as to give the poor, who perhaps pay no other direct tax, a sense of their duty to contribute to public objects, and especially to those in whose benefits they directly share. The amount of a poll tax is always small, $1 or $2: sometimes the payment of it is made a pre-requisite to the exercise of the electoral franchise. It is, I think, never imposed on women or minors.

In some States "foreign" corporations, *i.e.* those chartered by or domiciled in another State, are taxed more heavily than domestic corporations. New Hampshire has recently, by taxing "foreign" insurance companies, succeeded in driving them out of its limits.

I have found no instance of a progressive inheritance duty, or of a progressive income tax such as some of the Swiss cantons have imposed. California, however, in her Constitution of 1879 (see Appendix to this volume) has attempted to tax the same property twice over.

There is always a desire to hit companies, especially

agents (*i.e.* parcels' delivery), grocery keepers, liquor dealers, insurance, vendors of patents, persons or corporations using franchises or privileges, banks, railroads, destructive domestic animals, dealers in "options" or "futures."

banks[1] and railroads. The newer Constitutions often direct the legislature to see that such undertakings are duly taxed, sometimes forbidding it ever to deprive itself of the power of taxing any corporation, doubtless from the fear that these powerful bodies may purchase from a pliant legislature exemption from civic burdens.

III. In most States, certain descriptions of property are exempted from taxation, as for instance, the buildings or other property of the State, or of any local community, burying grounds, schools and universities, educational, charitable, scientific, literary, or agricultural institutions or societies, public libraries, churches and other buildings or property used for religious purposes, cemeteries, household furniture, farming implements, deposits in savings banks. Often too it is provided that the owner of personal property below a certain figure shall not pay taxes on it, and occasionally ministers of religion are allowed a certain sum (as for instance in New York, $1500) free from taxation.

No State can tax any bonds, debt certificates, or other securities issued by, or under the authority of, the Federal government, including the circulating notes commonly called "greenbacks." This has been held to be the law on the construction of the Federal Constitution, and has been so declared in a statute of Congress. It introduces an element of great difficulty into State taxation, because persons desiring to escape taxation are apt to turn their property into these exempted forms just before they make their tax returns.

IV. Some of the State taxes, such, for instance, as licence taxes, or a tax on corporations, are directly levied by and paid to the State officials. But others,

[1] As to banks, see Ohio Constitution of 1851, Article xii. § 3. Banks were an object of as much popular dislike then as railroads are now.

and particularly the property tax, which forms so large a source of revenue, are collected by the local authorities. The State having determined what income it needs, apportions this sum among the counties, or in New England, sometimes directly among the towns, in proportion to their paying capacity, that is, to the value of the property situate within them.[1] So similarly the counties apportion not only what they have to pay to the State, but also the sum they have to raise for county purposes, among the cities and townships within their area, in proportion to the value of their taxable property. Thus, when the township or city authorities assess and collect taxes from the individual citizen, they collect at one and the same time three distinct sets of taxes, the State tax, the county tax, and the city or township tax. Retaining the latter for local purposes,[2] they hand on the two former to the county authorities, who in turn retain the county tax, handing on to the State what it requires. Thus trouble and expense are saved in the process of collecting, and the citizen sees in one tax-paper all he has to pay.

V. Some States, taught by their sad experience of reckless legislatures, limit by their Constitutions the amount of taxation which may be raised for State purposes in any one year. Thus Texas in 1876 forbade the State property tax to exceed one half per cent on the valuation (exclusive of the sum needed to pay interest on the State debt), and has since reduced the percentage to ·35.[3] A similar provision exists in Missouri, and in

[1] As ascertained by the assessors and board of equalization.

[2] Sometimes, however, the town or township in its corporate capacity pays the State its share of the State tax, instead of collecting it specifically from individual citizens.

[3] In spite of this Texas had in March 1888 a surplus of $2,000,000 in her State treasury, so that the Governor was obliged to summon the

four other Southern or Western States. We shall see presently that this method of restriction has been more extensively applied to cities and other subordinate communities. Sometimes we find directions that no greater revenue shall be raised than the current needs of the State require, a rule which Congress would have done well to observe, seeing that a surplus revenue invites extravagant and reckless expenditure and gives opportunity for legislative jobbery.[1]

It may be thought that the self-interest of the people is sufficient to secure economy and limit taxation. But, apart from the danger of a corrupt legislature, it is often remarked that as in many States a large proportion of the voters do not pay State taxes,[2] the power of imposing burdens lies largely in the hands of persons who have no direct interest, and suppose themselves to have no interest at all, in keeping down taxes which they do not pay. So far, however, as State finance is concerned, this has been no serious source of mischief, and more must be attributed to the absence of efficient control over expenditure, and to the fact that (as in Congress) the committee which reports on appropriations of the revenue is distinct from that which deals with the raising of revenue by taxation.

Another illustration of the tendency to restrict the improvidence of representatives is furnished by the prohibitions in many Constitutions to pass bills

legislature in extra session to dispose of this surplus and prevent the growth of another.

[1] Sir T. More in his *Utopia* mentions with approval a law of the Macarians forbidding the king to have ever more than £1000 in the public treasury.

[2] Mr. Ford says (*Citizens' Manual*) that it is estimated that only eight per cent of the whole population of the United States pay State taxes. Of course, a much larger percentage of the voters pay, they being nearly one-fourth of the whole.

appropriating moneys to any private individual or corporation, or to authorize the payment of claims against the State arising under any contract not strictly and legally binding, or to release the claims which the State may have against railroads or other corporations. One feels, in reading these multiform provisions, as if the legislature was a rabbit seeking to issue from its burrow to ravage the crops wherever it could, and the people of the State were obliged to close every exit, because they could not otherwise restrain its inveterate propensity to mischief.

VI. Nothing in the financial system of the States better deserves attention than the history of the State debts, their portentous growth, and the efforts made, when the people had taken fright, to reduce their amount, and to set limits to them in the future.

Sixty years ago, when those rich and ample Western lands which now form the States of Ohio, Indiana, Illinois, Michigan, and Missouri were being opened up and settled, and again forty years ago, when railway construction was in the first freshness of its marvellous extension, and was filling up the lands along the Mississippi at an increasingly rapid rate, every one was full of hope; and States, counties, and cities, not less than individual men, threw themselves eagerly into the work of developing the resources which lay around them. The States, as well as these minor communities, set to work to make roads and canals and railways; they promoted or took stock in trading companies, they started or subsidized banks, they embarked in, or pledged their credit for, a hundred enterprises which they were ill-fitted to conduct or supervise. Some undertakings failed lamentably, while in others the profits were grasped by private speculators, and the burden

left with the public body. State indebtedness, which in 1825 (when there were twenty-four States) stood at an aggregate over the whole Union of $12,790,728 (£2,500,000), had in 1842 reached $203,777,916[1] (£40,000,000), in 1870 $352,866,898 (£70,000,000).

A part of the increase between the latter years was due to loans contracted for the raising and equipping of troops by many Northern States to serve in the Civil War, the intention being to obtain ultimate reimbursement from the national treasury. There was also a good deal in the way of executed works to show for the money borrowed and expended, and the States (in 1870 thirty-seven in number) had grown vastly in taxable property. Nevertheless the huge and increasing total startled the people, and, as everybody knows, some States repudiated their debts. The diminution in the total indebtedness of 1880, which stood at $250,722,081 (£50,144,000), and is the indebtedness of thirty-eight States, is partly due to this repudiation. Even after the growth of State debts had been checked (in the way to be presently mentioned), minor communities, towns, counties, but above all, cities trod in the same path, the old temptations recurring, and the risks seeming smaller because a municipality had a more direct and close interest than a State in seeing that its money or credit was well applied. Municipal indebtedness has advanced, especially in the larger cities, at a dangerously swift rate. Of the State and county debt much the largest part had been incurred for, or in connection with, so-called "internal improvements"; but of the city debt, though a part was due to the

[1] In 1838 it was estimated that of the total debt of the States, then calculated at $170,800,000 (say £35,000,000), $60,200,000 had been incurred for canals, $42,800,000 for railroads, and $52,600,000 for banking.

bounties given to volunteers in the Civil War, much must be set down to extremely lax and wasteful administration, and much more to mere stealing, practised by methods to be hereafter explained, but facilitated by the habit of subsidizing, or taking shares in, corporate enterprises which had excited the hopes of the citizens.

VII. The disease spread till it terrified the patient, and a remedy was found in the insertion in the Constitutions of the States of provisions limiting the borrowing powers of State legislatures. Fortunately the evil had been perceived in time to enable the newest States (Minnesota, Wisconsin, Oregon, Kansas, Nevada, Nebraska, West Virginia, Colorado) to profit by the experience of their predecessors. For the last thirty years, whenever a State has enacted a Constitution, it has inserted sections restricting the borrowing powers of States and local bodies, and often also providing for the discharge of existing liabilities. Not only is the passing of bills for raising a State loan surrounded with special safeguards, such as the requirement of a two-thirds majority in each house of the legislature; not only is there a prohibition ever to borrow money for, or even to undertake, internal improvements (a fertile source of jobbery and waste, as the experience of Congress shows); not only is there almost invariably a provision that whenever a debt is contracted the same Act shall create a sinking fund for paying it off within a few years, but in most Constitutions the total amount of the debt is limited, and limited to a sum beautifully small in proportion to the population and resources of the State.[1] Thus Wisconsin fixes its maximum at $200,000

[1] Debts incurred for the purpose of suppressing insurrection or repelling invasion are excepted from these limitations.

(£40,000); Minnesota and Iowa at $250,000, Ohio at $750,000; Nebraska at $100,000; prudent Oregon at $50,000; and the great and wealthy State of Pennsylvania, with a population now exceeding 5,000,000 (Constitution of 1873, Art. ix. § 4), at $1,000,000.[1]

In thirty-one States, including all those with recent Constitutions, the legislature is forbidden to "give or lend the credit of the State in aid of any person, association, or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever for the payment of the liabilities present or prospective of any individual association, municipal, or other corporation,"[2] as also to take stock in a corporation, or otherwise embark in any gainful enterprise. Many Constitutions also forbid the assumption by the State of the debts of any individual or municipal corporation.

The care of the people for their financial freedom and safety extends even to local bodies. Many of the recent Constitutions limit, or direct the legislature to limit, the borrowing powers of counties, cities, or towns, sometimes even of incorporated school districts, to a sum not exceeding a certain percentage on the assessed value of the taxable property within the area in question. This percentage is usually five per cent (*e.g.* Illinois, Constit. of 1870, Art. ix. § 12), sometimes (*e.g.* Pennsylvania, Constit. of 1873, Art. ix. § 8) seven per cent; New York (Amend. of 1884), ten per cent. Sometimes also

[1] New York (Constitution of 1846, Art. vii. §§ 10-12) also names a million of dollars as the maximum, but permits laws to be passed raising loans for "some single work or object," provided that a tax is at the same time enacted sufficient to pay off this debt in eighteen years; and that any such law has been directly submitted to the people and approved by them at an election.

[2] Constitution of Missouri of 1875 (Art. iv. § 45), a Constitution whose provisions on financial matters and restrictions on the legislature are copious and instructive. Similar words occur in nearly all Western and Southern, as well as in some of the more recent Eastern Constitutions.

the amount of the tax leviable by a local authority in any year is restricted to a definite sum—for instance, to one half per cent on the valuation.[1] And in all the States but seven, cities, counties, or other local incorporated authorities are forbidden to pledge their credit for, or undertake the liabilities of, or take stock in, or otherwise give aid to, any undertaking or company. Sometimes this prohibition is absolute; sometimes it is made subject to certain conditions, and may be avoided by their observance. For instance, there are States in which the people of a city can, by special vote, carried by a two-thirds majority, or a three-fifths majority, or (in Colorado) by a bare majority of the tax-payers, authorize the contracting of a debt which the municipality could not incur by its ordinary organs of government. Sometimes there is a direction that any municipality creating a debt must at the same time provide for its extinction by a sinking fund. Sometimes the restrictions imposed apply only to a particular class of undertakings—*e.g.* banks or railroads. The differences between State and State are endless; but everywhere the tendency is to make the protection against local indebtedness and municipal extravagance more and more strict; nor will any one who knows these local authorities, and the temptations, both good and bad, to which they are exposed, complain of the strictness.[2]

Cases, of course, occur in which a restriction on the taxing power or borrowing power of a municipality is found inconvenient, because a costly public improvement is rendered more costly if it has to be done piecemeal.

[1] See, for elaborate provisions under this head, the Constitution of Missouri of 1875.

[2] In a Note to Chapter LI. *post*, placed at the end of this volume, I have given some specimens of the constitutional provisions which restrict the borrowing powers of local authorities.

The corporation of Brooklyn was thus recently prevented from making all at once a great street which would have been a boon to the city, and will have to spend more money in buying up the land for it bit by bit. But the evils which have followed in America from the immixture both of States and of cities in enterprises of a public nature, and the abuses incident to an unlimited power of undertaking improvements, have been so great as to make people willing to bear with the occasional inconveniences which are inseparable from restriction.

Says Judge Cooley: "A catalogue of these evils would include the squandering of the public domain; the enrichment of schemers whose policy it has been first to obtain all they can by fair promises, and then avoid, as far and as long as possible, the fulfilment of the promises; the corruption of legislation; the loss of State credit; great public debts recklessly contracted for; moneys often recklessly expended; public discontent, because the enterprises fostered from the public treasury, and on the pretence of public benefit, are not believed to be managed in the public interest; and finally, great financial panic, collapse, and disaster."[1]

The provisions above described have had the effect of steadily reducing the amount of State and county debts, although the wealth of the country makes rapid strides. A careful writer estimates this reduction between 1870 and 1880 at 25 per cent in the case of State debts, and in that of county, town, and school district debts at 8 per cent.[2] In cities, however, there has been, within the same decade, not only no reduction, but an

[1] Cooley, *Constit. Limit.* p. 266. The notes to pp. 262 and 272 contain a very instructive sketch of the history of these financial evils.

[2] Mr. Robert L. Porter, in the American *Cyclopædia of Political Science*, article "Debts"; an article in which much valuable information on this large subject will be found.

increase of over 100 per cent, possibly as much as 130 per cent. The total debt of cities with a population exceeding 7500 was, in 1880 (in round numbers), $710,000,000 (£142,000,000); that of smaller municipalities, $56,000,000.

This striking difference between the cities and the States may be explained in several ways. One is that cities cannot repudiate, while sovereign States can and do.[1] Another may be found in the later introduction into State Constitutions of restrictions on the borrowing powers of municipalities. But the chief cause is to be found in the conditions of the government of great cities, where the wealth of the community is largest, and is also most at the disposal of a multitude of ignorant voters. Several of the greatest cities lie in States which did not till recently, or have not even now, imposed adequate restrictions on the borrowing power of city councils. Now city councils are not only incapable administrators, but are prone to such public improvements as present opportunities for speculation, for jobbery, and even for wholesale embezzlement.

[1] In some parts of New England the city, town, or other municipal debt is also the personal debt of every inhabitant, and is therefore an excellent security.

CHAPTER XLIV

THE WORKING OF STATE GOVERNMENTS

THE difficulty I have already remarked of explaining to Europeans the nature of an American State, viz. that there is in Europe nothing similar to it, recurs when we come to inquire how the organs of government which have been described play into one another in practice. To say that a State is something lower than the nation but greater than a municipality, is to say what is obvious, but not instructive; for the peculiarity of the State is that it combines some of the features which are to Europeans characteristic of a nation and a nation only, with others that belong to a municipality.

The State seems great or small according to the point of view from which one regards it. It is vast if one regards the sphere of its action and the completeness of its control in that sphere, which includes the maintenance of law and order, nearly the whole field of civil and criminal jurisprudence, the supervision of all local governments, an unlimited power of taxation. But if we ask, Who are the persons that manage this great machine of government; how much interest do the citizens take in it; how much reverence do they feel for it? the ample proportions we had admired begin to dwindle, for the persons turn out to be insignificant, and

the interest of the people to have steadily declined. The powers of State authorities are powers like those of a European parliament; but they are wielded by men most of whom are less distinguished and less respected by their fellows than are those who fill the city councils of Manchester or Cologne. Several States exceed in area and population some ancient European monarchies. But their annals may not have been illumined by a single striking event or brilliant personality.

A further difficulty in describing how a State government works arises from the endless differences of detail between the several States. The organic frame of government is similar in all; but its functional activities vary according to the temper and habits, the ideas education and traditions of the inhabitants of the State. A European naturally says, "Select a typical State, and describe that to us." But there is no such thing as a typical State. Massachusetts or Connecticut is a fair sample of New England, Minnesota or Iowa of the North-West; Georgia or Alabama shows the evils, accompanied no doubt by great recuperative power, that still vex the South; New York and Illinois the contrast between the tendencies of an ignorant city mob and the steady-going farmers of the rural counties. But to take any one of these States as a type, asking the reader to assume what is said of it to apply equally to the other thirty-seven commonwealths, would land us in inextricable confusions. I must therefore be content to speak quite generally, emphasizing those points in which the colour and tendencies of State governments are much the same over the whole Union, and begging the European reader to remember that illustrations drawn, as they must be drawn, from some particular State, will not necessarily be true of some other State

government, because its life may go on under different conditions.

The State governments, as has been observed already, bear a family likeness to the National or Federal government, a likeness due not only to the fact that the latter was largely modelled after the systems of the old thirteen States, but also to the influence which the Federal Constitution has exerted ever since 1789 on those who have been drafting or amending State Constitutions. Thus the Federal Constitution has been both child and parent. Where the State Constitutions differ from the Federal, they invariably differ in being more democratic. It still expresses the doctrines of 1787. They express the views of later days, when democratic ideas have been more rampant, and men less cautious than the sages of the Philadelphia Convention have given legal form to popular beliefs. This difference, which appears not only in the mode of appointing judges, but in the shorter terms which the States allow to their officials and senators, comes out most clearly in the relations established between the legislative and the executive powers. The national executive, as we have seen, is disjoined from the national legislature in a way strange to Europeans. Still, the national executive is all of a piece. The President is supreme; his ministers are his subordinates, chosen by him from among his political associates. They act under his orders; he is responsible for their conduct. But in the States there is nothing even distantly resembling a cabinet. The chief executive officials are directly elected by the people. They hold by a title independent of the State governor. They are not, except so far as some special statute may provide, subject to his directions, and he is not responsible for their conduct, since he can-

not control it. As the governor need not belong to the party for the time being dominant in the legislature, so the other State officials need not be of the same party as the governor. They may even have been elected at a different time, or for a longer period.

A European, who studies the mechanism of State government—very few Europeans so far having studied it—is at first puzzled by a system which contradicts his preconceived notions. "How," he asks, "can such machinery work? One can understand the scheme under which a legislature rules through officers whom it has, whether legally or practically, chosen and keeps in power. One can even understand a scheme in which the executive, while independent of the legislature, consists of persons acting in unison, under a head directly responsible to the people. But will not a scheme, in which the executive officers are all independent of one another, yet not subject to the legislature, want every condition needed for harmonious and efficient action? They obey nobody. They are responsible to nobody, except a people which only exists in concrete activity for one election day every two or three years, when it is dropping papers into the ballot-box. Such a system seems the negation of a system, and more akin to chaos."

In his attempts to penetrate this mystery, our European receives little help from his usually helpful American friends, simply because they do not understand his difficulty. Light dawns on him when he perceives that the executive business of a State is such as not to need any policy, in the European sense, and therefore no harmony of view or purpose among those who manage it. Everything in the nature of State policy belongs to the legislature, and to the legislature alone.

Compare the Federal President with the State

Governor. The former has foreign policy to deal with, the latter has none. The former has a vast patronage, the latter has scarcely any. The former has the command of the army and navy, the latter has only the militia, insignificant in ordinary times. The former has a post-office, but there is no State postal-service. Little remains to the Governor except his veto, which is not so much an executive as a legislative function; the duty of maintaining order, which becomes important only when insurrection or riot breaks out; and the almost mechanical duty of representing the State for various matters of routine, such as demanding from other States the extradition of offenders, issuing writs for the election of congressmen or of the State legislature, receiving the reports of the various State officials. These officials, even the highest of them who correspond to the cabinet ministers in the National government, are either mere clerks, performing work, such as that of receiving and paying out State moneys, strictly defined by statute, and usually checked by other officials, or else are in the nature of commissioners of inquiry, who may inspect and report, but can take no independent action of importance. Policy does not lie within their province; even in executive details their discretion is confined within narrow limits. They have, no doubt, from the governor downwards, opportunities for jobbing and malversation; but even the less scrupulous are restrained from using these opportunities by the fear of some investigating committee of the legislature, with possible impeachment or criminal prosecution as a consequence of its report. Holding for terms which seldom exceed two or three years, they feel the insecurity of their position; but the desire to earn re-election by the able and conscientious discharge of their functions, is a

less effective motive than it would be if the practice of re-electing competent men were more frequent. Unfortunately here, as in Congress, the tradition of many States is, that when a man has enjoyed an office, however well he may have served the public, some one else ought to have the next turn.

The reason, therefore, why the system I have sketched rubs along in the several States is, that the executive has little to do, and comparatively small sums to handle. The further reason why it has so little to do is two-fold. Local government is so fully developed that many functions, which in Europe would devolve on a central authority, are in all American States left to the county, or the city, or the township, or the school district. These minor divisions narrow the province of the State, just as the State narrows the province of the central government. And the other reason is, that legislation has in the several States pushed itself to the farthest limits, and so encroached on subjects which European legislatures would leave to the executive, that executive discretion is extinct, and the officers are the mere hands of the legislative brain, which directs them by statutes drawn with extreme minuteness, carefully specifies the purposes to which each money grant is to be applied, and supervises them by inquisitorial committees.

It is a natural consequence of these arrangements that State office carries little either of dignity or of power. A place is valued chiefly for its salary, or for such opportunities of obliging friends or securing commissions on contracts as it may present, though in the greatest States the post of attorney-general or comptroller is often sought by able men. A State Governor, however, is not yet a nonentity. In more than one State a sort of perfume from the old days

lingers round the office, as in Massachusetts, where the traditions of last century were renewed by the eminent man who occupied the chair of the commonwealth during the War of Secession and did much to stimulate and direct the patriotism of its citizens. Though no one would nowadays, like Mr. Jay in 1795, exchange the chief-justiceship of the United States for the governorship of his State, a Cabinet minister will sometimes, as Mr. Folger did a few years ago, resign his post in order to offer himself for the governorship of a great State like New York. In all States, the Governor, as the highest official and the depositary of State authority, may at any moment become the pivot on whose action public order turns. In the Pennsylvania riots of 1877 it was the accidental absence of the Governor on a tour in the West which enabled the forces of sedition to gather strength. During the more recent disturbances which large strikes, especially among railway employés, have caused in the West, the prompt action of a Governor has preserved or restored tranquillity in more than one State; while the indecision of the Governor of an adjoining one has emboldened strikers to stop traffic, or to molest workmen who had been hired to replace them. So in a commercial crisis, like that which swept over the Union in 1837, when the citizens are panic-stricken and the legislature hesitates, much may depend on the initiative of the Governor, to whom the eyes of the people naturally turn. His right of suggesting legislative remedies, usually neglected, then becomes significant, and may abridge or increase the difficulties of the community.

It is not, however, as an executive magistrate that a State Governor usually makes or mars a reputation, but in his quasi-legislative capacity of agreeing to or vetoing bills passed by the legislature. The merit of a Governor

is usually tested by the number and the boldness of his vetoes; and a European enjoys, as I did in the State of New York in 1870, the odd spectacle of a Governor appealing to the people for re-election on the ground that he had defeated in many and important instances the will of their representatives solemnly expressed in the votes of both Houses. That such appeals should be made, and often made successfully, is due not only to the distrust which the people entertain of their legislatures, but also, to their honour be it said, to the respect of the people for courage. They like above all things a strong man; just as English constituencies prefer a candidate who refuses to swallow pledges or be dictated to by cliques.

This view of the Governor as a check on the legislature explains why the Americans think it rather a gain than an injury to the State that he should belong to the party which is for the time being in a minority in the legislature. How the phenomenon occurs may be seen by noting the different methods of choice employed. The Governor is chosen by a mass vote of all citizens over the State. The representatives are chosen by the same voters, but in districts. Thus one party may have a majority on a gross poll of the whole State, but may find itself in a minority in the larger number of electoral districts. This happens in New York State, on an average, in two years out of every three. The mass vote shows a Democratic majority, because the Democrats are overwhelmingly strong in New York City, and some other great centres of population. But in the rural districts and most of the smaller towns the Republican party commands a majority sufficient to enable them to carry most districts. Hence, while the Governor is usually a Democrat, the legislature

is usually Republican. Little trouble need be feared from the opposition of the two powers, because such issues as divide the parties have scarce any bearing on State politics. Some good may be hoped, because a Governor of the other party is more likely to check or show up the misdeeds of a hostile Senate or Assembly than one who, belonging to the group of men which guides the legislature, has a motive for working with them, and may expect to share any gains they can amass.[1]

Thus we are led back to the legislature, which is so much the strongest force in the several States that we may almost call it the Government and ignore all other authorities. Let us see how it gets on without that guidance which an executive ministry supplies to the Chambers of every free European country.

As the frame of a State government generally resembles the National government, so a State legislature resembles Congress. But, in most States, it exaggerates the characteristic defects of Congress. It has fewer able and high-minded men among its members. It has less of recognized leadership. It is surrounded by temptations relatively greater. It is guarded by a less watchful and less interested public opinion. But before we inquire what sort of men fill the legislative halls, let us ask what kinds of business draw them there.

The matter of State legislation may be classified under three heads:

[1] Sometimes, however, inconvenience arises from the hostility of the State Senate and the Governor. Quite recently the Senate of New York persistently refused to confirm the nominations made to certain offices by the Governor, with the effect of securing the retention in office long beyond their legal term of several officials, these old officials holding on and drawing their salaries because no new men had been duly appointed to fill their places. The Senate was thought to have behaved ill; but the Governor was not trusted and exerted no moral authority.

I. Ordinary private law, *i.e.* contracts, torts, inheritance, family relations, offences, civil and criminal procedure.

II. Administrative law, including the regulation of municipal and rural local government, public works, education, the liquor traffic, vaccination, adulteration, charitable and penal establishments, the inspection of mines or manufactories, together with the general law of corporations, of railroads, and of labour, together also with taxation, both State and local, and the management of the public debt.

III. Measures of a local and special nature, such as are called in England "private bills," *i.e.* bills for chartering and incorporating gas, water, canal, tramway, or railway companies, or for conferring franchises in the nature of monopolies or privileges upon such bodies, or for altering their constitutions, for incorporating cities and minor communities and regulating their affairs.

Comparing these three classes of business, between the first and second of which it is no doubt hard to draw a sharp line, we shall find that bills of the second class are more numerous than those of the first, bills of the third more numerous than those of the other two put together. Ordinary private law, the law which guides or secures us in the everyday relations of life, and upon which nine-tenths of the suits between man and man are founded, is not greatly changed from year to year in the American States. Some Western, and a few Eastern States have made bold experiments in the field of divorce, others have added new crimes to the statute-book and amended their legal procedure. But commercial law, as well as the law of property and civil rights in general, remains tolerably stable. People are satisfied with things as

they are, and the influence of the legal profession is exerted against tinkering. In matters of the second class, which I have called administrative, because they generally involve the action of the State or of some of the communities which exist within it, there is more legislative activity. Every session sees experiments tried in this field, generally with the result of enlarging the province of government, both by interfering with the individual citizen and by attempting to do things for him which apparently he either does not do or does not do well for himself.[1] But the general or "public" legislation, as Englishmen would call it, is dwarfed by the "private bill" legislation which forms the third of our classes. The bills that are merely local or special outnumber general bills everywhere, and outnumber them enormously in those States which, like Virginia and Mississippi, do not require corporations to be formed under general laws. Such special bills are condemned by thoughtful Americans, not only as confusing the general law, but because they furnish, unless closely watched, opportunities for perpetrating jobs, and for inflicting injustice on individuals or localities in the interest of some knot of speculators. They are one of the scandals of the country. But there is a further objection to their abundance in the State legislatures. They are a perennial fountain of corruption. Promoted for pecuniary ends by some incorporated company or group of

[1] See the chapter on "Laissez Faire," Vol. III. p. 266.

Many of these measures have been prepared by associations outside the legislature, who embody their wishes in a bill, give it to a member or members, and get it passed, perhaps with scarcely any debate. Thus not only the Labour organizations, such as the Knights of Labour, and the Grangers (farmers' clubs), but the Women's Christian Temperance Union, the medical profession, the dentists, the dairymen, get their favourite schemes enacted.

men proposing to form a company, their passage is secured by intrigue, and by the free expenditure of money which finds its way in large sums to the few influential men who control a State Senate or Assembly, and in smaller sums to those among the rank and file of members who are accessible to these solid arguments, and careless of any others. It is the possibility of making profit in this way out of a seat in the legislature which draws to it not a few men in those States which, like New York, Pennsylvania, or Illinois, offer a promising field for large pecuniary enterprises. Where the carcase is there will the vultures be gathered together. The money power, which is most formidable in the shape of large corporations, chiefly attacks the legislatures of these great States. It is, however, felt in nearly all States. And even where, as is the case in most States, only a small minority of members are open to bribes, the opportunity which these numerous local and special bills offer to a man of making himself important, of obliging his friends, of securing something for his locality, and thereby confirming his local influence, is sufficient to make a seat in the legislature desired chiefly in respect of such bills, and to obscure, in the eyes of most members, the higher functions of general legislation which these assemblies possess. One may apply to these commonwealths, though in a new sense, the famous dictum, *corruptissima republica plurimae leges.*

One form of this special legislation is peculiarly attractive and pernicious. It is the power of dealing by statute with the municipal constitution and actual management of cities. Cities grow so fast that all undertakings connected with them are particularly tempting to speculators. City revenues are so large as to offer rich plunder to those who can seize the control

of them. The vote which a city casts is so heavy as to throw great power into the hands of those who control it, and enable them to drive a good bargain with the wirepullers of a legislative chamber. Hence the control exercised by the State legislature over city government is a most important branch of legislative business, a means of power to scheming politicians, of enrichment to greedy ones, and if not of praise to evil-doers, yet certainly of terror to them that do well.[1]

We are now in a position, having seen what the main business of a State legislature is, to inquire what is likely to be the quality of the persons who compose it. The conditions that determine their quality may be said to be the following:—

I. The system of selection by party conventions. As this will be described in later chapters, I will here say no more than that it prevents the entrance of good men and favours that of bad ones.

II. The habit of choosing none but a resident in any electoral district to represent that district, a habit which narrows the field of choice, and not only excludes competent men from other parts of the State, but deters able men generally from entering State politics, since he who loses his seat for his own district cannot find his way back to the legislature as member for any other.

III. The fact that the capital of a State—*i.e.* the meeting-place of the legislature and residence of the chief officials, is usually a small town, at a distance

[1] Although this tinkering with city government is most harmful where the cities are large, it is abundant even where the cities are small. For instance, in Wisconsin, a Western State with no large cities, there were passed in the session of 1885 about 500 acts granting or dealing with city charters, filling 1342 pages of print. All the other acts of the year filled only about 600 pages. I owe this fact, as well as that stated in note 1, p. 155, to an interesting discourse by Dr. Albert Shaw of Minneapolis, delivered in 1888 before Cornell University.

from the most populous city or cities of the State, and therefore a place neither attractive socially nor convenient for business men or lawyers, and which, it may be remarked in passing, is more shielded from a vigilant public opinion than is a great city, with its keen and curious press. Pennsylvanians who might be willing to serve in a legislature meeting at Philadelphia are less inclined to attend one at Harrisburg. An eminent citizen of Connecticut observed to me that, whereas everybody in that little State could reach Hartford in a few hours from its farthest corner, a member attending the legislature of Illinois or Wisconsin might often have to quit his home and live during the session at Springfield or Madison, because these capitals are remote from the outer parts of those large commonwealths. He thought this an important factor in the comparative excellence of the Connecticut legislature.

IV. The nature of the business that comes before a State legislature. As already explained, by far the largest part of this business excites little popular interest and involves no large political issues. Unimportant it is not. Nothing could well be more important than to repress special legislation, and deliver cities from the fangs of the spoiler. But its importance is not readily apprehended by ordinary people, the mischiefs that have to be checked being spread out over a multitude of bills, most of them individually insignificant, however ruinous in their cumulated potency. Hence a leading politician seldom troubles himself to enter a State legislature, while the men who combine high character with talent and energy are too much occupied in practising their profession or pushing their business to undertake the dreary task of wrangling over gas and railroad bills in

committees, or exerting themselves to win some advantage for the locality that returns them.

I have not mentioned among these depressing conditions the payment of salaries to members, because it does not seem to make any substantial difference. It is no doubt an attraction to some of the poorer men, to penurious farmers, or half-starved lawyers. But in attracting them it does not serve to keep out any better men. Probably the sense of public duty would be keener if legislative work was not paid at all. This is matter for speculation. But, looking at the question practically, I doubt whether the discontinuance of salaries would improve the quality of American legislators. The drawbacks to the position which repel the best men, the advantages which attract inferior men, would remain the same as now; and there is nothing absurd in the view that the places of those who might cease to come if they did not get their five dollars a day would be taken by men who would manage to make as large an income in a less respectable way.

After this, it need scarcely be said that the State legislatures are not high-toned bodies. The best seem to be those of some of the New England States, particularly Massachusetts, where the venerable traditions surrounding an ancient commonwealth do something to sustain the dignity of the body and induce good men to enter it. This legislature, called the General Court, is, according to the best authorities, substantially pure, and does its work well. Its composition is inferior to that of the General Courts of sixty years ago, but does not seem to be declining at present. Connecticut has a good Senate, and a fair House of Representatives. It is also reported to be honest, though not free from demagogism. Vermont

is pure; New Hampshire, a State where constituencies are reproached with bribery, less respectable. Next come some of the North-Western States, where the population, consisting almost entirely of farmers, who own as well as work their land, sends up members who fairly represent its average intelligence, and are little below the level of its average virtue. There are no traditions in such States, and there are already corporations rich enough to corrupt members and be themselves black-mailed. Hence one is prepared to find among the legislators professional politicians of the worst class. But the percentage of such men is small in States like Michigan, Iowa, Minnesota, Oregon, probably not more than from five to ten per cent, the other members being often ignorant and narrow, but honest and well-intentioned. In Ohio and Indiana the proportion of black sheep may be a little higher.

It is hard to present a general view of the Southern States, both because there are great differences among them, and because they are still in a state of transition, generally, it would seem, transition towards a better state of things. Roughly speaking, their legislatures seem to stand below those of the North-West, though in most a few men of exceptional ability and standing may be found. Kentucky and Georgia are among the better States, Louisiana and Arkansas, the former infected by New Orleans, the latter a singularly rude community, among the worst.

The lowest place belongs to the States which, possessing the largest cities, have received the largest influx of European immigrants, and have fallen most completely under the control of unscrupulous party managers. New York, Philadelphia, Baltimore, Chicago, San Fran-

cisco have done their best to poison the legislatures of the States in which they respectively lie by filling these bodies with members of a low type, as well as by being themselves the centres of enormous accumulations of capital. They have brought the strongest corrupting force into contact with the weakest and most corruptible material; and there has followed in Pennsylvania and New York such a Witches' Sabbath of jobbing, bribing, thieving, and prostitution of legislative power to private interest as the world has seldom seen. Of course even in these States the majority of the members are not bad men, for the majority come from the rural districts or smaller towns, where honesty and order reign as they do generally in Northern and Western America outside a few large cities. Many of them are farmers or small lawyers, who go up meaning to do right, but fall into the hands of schemers who abuse their inexperience and practise on their ignorance. One of the ablest and most vivacious of the younger generation of American politicians[1] says:—"The New York legislature taken as a whole is not so bad a body as we would be led to believe, if our judgment was based purely on what we read in the metropolitan papers; for the custom of the latter is to portray things as either very much better or very much worse than they are. Where a number of men, many of them poor, some of them unscrupulous, and others elected by constituents too ignorant to hold them to a proper accountability for their actions, are put into a position of great temporary power, where they are called to take action upon questions affecting the welfare of large corporations and wealthy private individuals,

[1] Mr. Theodore Roosevelt of New York, from whose instructive article in the *Century Magazine* for April 1885, I quote the passage in the text.

the chances for corruption are always great; and that there is much viciousness and political dishonesty, much moral cowardice, and a good deal of actual bribe-taking at Albany, no one who has had practical experience of legislation can doubt. At the same time, I think the good members outnumber the bad. . . . The representatives from the country districts are usually good men, well-to-do farmers, small lawyers, or prosperous store-keepers, and are shrewd, quiet, and honest. They are often narrow-minded, and slow to receive an idea; but they cling to it with the utmost tenacity. For the most part they are native Americans, and those who are not are men who have become completely Americanized in their ways and habits of thought. . . . The worst legislators come from the great cities. They are usually foreigners of little or no education, with exceedingly misty ideas as to morality, and possessed of an ignorance so profound that it could only be called comic were it not for the fact that it has at times such serious effects on our laws. It is their ignorance quite as much as actual viciousness which makes it so difficult to procure the passage of good laws, or to prevent the passage of bad ones; and it is the most irritating of the many elements with which we have to contend in the fight for good government."[1]

The same writer goes on to say that after sitting in three New York legislatures he came to think that about one third of the members were open to corrupt influences, but that although the characters of those men were known to their colleagues and to the "lobby," it was rarely possible to convict them. Many of this

[1] Any one with experience of legislative bodies will agree with the view that ignorance and stupidity cause more trouble than bad intentions, seeing that they are the materials on which men of bad intentions play.

worst third had not gone into the legislature meaning to make gain out of the position, but had been corrupted by it. They found that no distinction was to be won there by legitimate methods, and when temptation came in their way they fell, having feeble consciences and no statesmanlike knowledge. Or they were anxious above all things to pass some local measure on which their constituents were set, and they found they could not win the support of other members except by becoming accomplices in the jobs or "steals" which these members were "putting through."[1] Or they gained their seat by the help of some influential man or powerful company, and found themselves obliged to vote according to the commands of their "owner."[2]

The corrupt member has several methods of making

[1] "There are two classes of cases in which corrupt members get money—one is when a wealthy corporation puts through some measure which will be of great benefit to itself, although perhaps an injury to the public at large; the other when a member introduces a bill hostile to some moneyed interest with the expectation of being paid to let the matter drop. The latter, technically called a 'strike,' is much the most common, for in spite of the outcry against them in legislative matters, corporations are more often sinned against than sinning. It is difficult in either case to convict the offending member, though we have very good laws against bribery."—Mr. Theodore Roosevelt, *ut supra.*

[2] "There came before a committee (of the New York House) of which I happened to be a member, a perfectly proper bill in the interest of a certain corporation; the majority of the committee, six in number, were thoroughly bad men, who opposed with the hope of being paid to cease their opposition. When I consented to take charge of the bill, I stipulated that not a penny should be paid to ensure its passage. It therefore became necessary to see what pressure could be brought to bear on the recalcitrant members; and accordingly we had to find out who were the authors and sponsors of their political being. Three proved to be under the control of local statesmen of the same party as themselves, and of equally bad moral character; one was ruled by a politician of unsavoury reputation from a different city; the fifth, a Democrat, was owned by a Republican (!) Federal official, and the sixth by the president of a horse-car [street tramway] company. A couple of letters from these two magnates forced the last-mentioned members to change front on the bill with surprising alacrity."—Mr. Theodore Roosevelt, *ut supra.*

gains. One, the most obvious, is to exact money or money's worth for his vote. A second is to secure by it the support of a group of his colleagues in some other measure in which he is personally interested, as for instance a measure which will add to the value of land near a particular city. This is "log-rolling," and is the most difficult method to deal with, because its milder forms are scarcely distinguishable from that legitimate give and take which must go on in all legislative bodies. A third is black-mailing. A member brings in a bill either specially directed against some particular great corporation, probably a railway, or proposing so to alter the general law as in fact to injure such a corporation, or a group of corporations. He intimates privately that he is willing to "see" the directors or the law-agents of the corporation, and is in many cases bought off by them, keeping his bill on the paper till the last moment so as to prevent some other member from repeating the trick. Even in the North-Western States there is usually a group of such "scallawag" members, who, finding the $300 they receive insufficient, increase their legislative income by levying this form of taxation upon the companies of the State. Nor is the device quite unknown in New England, where a ten hours labour bill, for instance, has frequently been brought in to frighten the large corporations and other capitalists into inducing its author to drop it, the inducements being such as capitalists can best apply. Every considerable railway keeps an agent or agents continually on the spot while a State legislature is in session, watching the bills brought in and the committees that deal with them. Such an agent sometimes relies on the friends of the railway to defeat these bills, and uses the usual expedients for creating

friends. But it is often cheaper and easier to square the assailant.[1] Of course the committees are the focus of intrigue, and the chairmanship of a committee the position which affords the greatest facilities for an unscrupulous man. Round the committees there buzzes that swarm of professional agents which Americans call "the lobby," soliciting the members, threatening them with trouble in their constituencies, plying them with all sorts of inducements, treating them to dinners, drinks, and cigars.[2]

In these demoralized States the State Senate is apt to be a worse body than the House, whereas in the better States the Senate is usually the superior body.[3] The reason is two-fold. As the Senate is smaller—in New York it consists of 32 members against 128 in the Assembly—the vote of each member is of more consequence, and fetches, when venal, a higher price. Other things being equal, a stronger temptation is

[1] The president of a Western railroad, an upright as well as able man, told me that he was obliged to keep constant guard at the capital of the State in which the line lay, while the legislature was sitting, and to use every means to defeat bills aimed at the railway, because otherwise the shareholders would have been ruined. He deplored the necessity. It was a State of comparatively good tone, but there was such a prejudice against railroads among the farming population, that mischievous bills had a chance of success, and therefore desperate remedies were needed.

[2] "One senator, who was generally known as 'the wicked Gibbs,' spent two years at Albany, in which he pursued his 'business' so shamelessly that his constituents refused to send him there again; but he coolly came out a year later and begged for a return to the Assembly on the ground that he was financially embarrassed, and wished to go to the Assembly in order to retrieve his fortunes on the salary of an Assemblyman, which is $1500 (£300)!"—Mr. J. B. Bishop of New York, in a paper entitled *Money in City Elections*, p. 6.

[3] Some of my American informants would not admit this; and some fixed the percentage of corrupt men, even at Albany, much lower than Mr. Roosevelt does. Writers of the pessimistic school make it even higher. I give here and elsewhere what seem to me to be on the whole the best supported views, though, as Herodotus says of the rise of Cyrus, "knowing how to tell three other paths of story also."

more likely to overcome virtue, and other things practically are equal, because it is just as hard to fix responsibility on a senator as on an Assembly man, and the post is no more dignified. And the second reason is that the most adroit and practised intriguers work their way up into the Senate, where their power (which includes the confirmation of appointments) is greater and their vote more valuable. There is a survival of the fittest, but as fitness includes the absence of scruples, this comes in practice to mean the natural selection of the worst.[1]

I escape from this Stygian pool to make some observations which seem applicable to State legislatures generally, and not merely to the most degraded.

The spirit of localism, surprisingly strong everywhere in America, completely rules them. A member is not a member for his State, chosen by a district but bound to think first of the general welfare of the commonwealth. He is a member for Brownsville, or Pompey, or the Seventh district, and so forth, as the case may be. His first and main duty is to get the most he can for his constituency out of the State treasury, or by means of State legislation. No appeal to the general interest would have weight with him against the interests of that spot. What is more, he is deemed by his colleagues of the same party to be the sole exponent of the wishes of the spot, and solely en-

[1] It will be remembered that the picture I am drawing is true of four or five State legislatures only. Similar faults exist in many others, but have not blossomed forth into the same luxuriance, and probably never may. Mr. Theodore Roosevelt says, "I have had opportunity of knowing something about the workings of but a few of our other State legislatures; from what I have heard and seen I should say that we (New York) stand about on a par with those of Pennsylvania, Maryland, and Illinois, above that of Louisiana, and below those of Vermont, Massachusetts, Rhode Island, and Minnesota, as well as below the national legislature at Washington." There is great diversity between the legislatures even of the same State (or Territory) in different years.

titled to handle its affairs. If he approves a bill which affects the place and nothing but the place, that is conclusive. Nobody else has any business to interfere. This rule is the more readily accepted, because its application all round serves the private interest of every member alike, while members of more enlarged views, who ought to champion the interests of the State and sound general principles of legislation, are rare. When such is the accepted doctrine as well as invariable practice, log-rolling becomes natural and almost legitimate. Each member being the judge of the measure which touches his own constituency, every other member supports that member in passing the measure, expecting in return the like support in a like cause. He who in the public interest opposes the bad bill of another, is certain to find that other opposing, and probably with success, his own bill, however good.

There is in State legislators, particularly in the West, a restlessness which, coupled with their limited range of knowledge and undue appreciation of material interests, makes them rather dangerous. Meeting for only a few weeks in the year, or perhaps in two years, they are alarmingly active during those weeks, and run measures through whose results are not apprehended till months afterwards. It is for this reason, no less than from the fear of jobbery, that the meeting of the legislature is looked forward to with anxiety by the "good citizens" in these communities, and its departure hailed as a deliverance. I once asked the governor of a far Western commonwealth how he got on with his legislature. "I won't say they are bad men," he answered, "but the pleasantest sight of the year to me is when at the end of the session I see their coat tails go round the street corner."

Both this restlessness and the general character of State legislation are illustrated by the enormous numbers of bills introduced in each session, comparatively few of which pass, because the time is too short, or opposing influences can be brought to bear on the committees.

There were introduced (in the sessions of 1885 or 1886)—

In Alabama	1469 bills	(442	passed)
,, Kentucky	2390 ,,	(1400	,,)
,, New Jersey	712 ,,	(275	,,)
,, Illinois	1107 ,,	(131	,,)
,, Pennsylvania	1065 ,,	(221	,,)
,, New York	2093 ,,	(681	,,)

In ten States the total number of bills introduced was 12,449, of which 3793 passed. The vast majority of these bills were local or special.[1] In South Carolina, during four years, out of about 900 Acts passed, only 256 related to matters of general public concern. Acts of incorporation, grants of inheritance, changes of names and releases from indebtedness, had consumed a large proportion of the time of the legislature at a great public expense, and to the serious detriment of the State.[2] Yet

[1] Even among the Acts which appear in the statute-books of the States, under the heading of general laws there are many of a local or special character. I find, on referring to the laws of Louisiana passed in 1886, that of 96 so-called general Acts passed, 30 were really local or special. In Nebraska, in 1887, there were passed 114 general Acts, 22 of which, while classed among general laws, were really local or personal, and 17 were described as special. In Minnesota, in 1887, of 265 classed as general Acts, 36 seem from their titles to be local or special. But it is not always easy to discover the substance from the title, so the number of special Acts classed as general may be still larger.

As remarked in an earlier chapter, the total number of bills of all kinds introduced in 1885 into the British Parliament, which is the sole legislative authority for a population of thirty-eight millions, was 481, of which 282 passed.

[2] I take these figures from the instructive and entertaining presidential address of Mr. William Allen Butler to the American Bar Association at its annual meeting in 1886.

South Carolina is not a State in which there is much capital or many large undertakings. The place which the petty matters mentioned take in it would, in more prosperous communities, be taken by bills relating to railroad and other companies, and to cities. The expense to which the States are put by their legislatures, with results rather injurious than beneficial, is very great. "In South Carolina, where the session is short, the cost is reported by the secretary of state at only $52,000. But in Pennsylvania, with 158 days of session, it is $686,500 (£137,300). In Connecticut the last session of ninety days cost $98,000, while the general expenses of the legislature of California are $130,000 for a session of sixty days. The cost of printing, of travelling, and other incidental expenses must be added in order to form an accurate estimate of the burden imposed on the tax-payers of the States to carry on this badly-managed business of law-making, which varies from a daily average cost of about $1000 per diem for every legislative session to over $4000 per diem, making an aggregate in the total number of States, and in Congress, which it is impossible to ascertain with exactness, but which cannot, I think, be less than $10,000,000 (£2,000,000), not as an exceptional outlay, but as the price paid for current legislation."[1]

Nothing is more remarkable about these State legislators than their timidity. No one seems to think of having an opinion of his own. In matters which touch the interests of his constituents, a member is, of course, their humble servant. In burning party questions—they are few, and mostly personal—he goes with his party. In questions of general public policy he looks to see how the cat jumps; and is ready to vote for anything which the

[1] Mr. W. A. Butler's address *ut supra*.

people, or any active section of the people, cry out for, though of course he may be secretly unfriendly, and may therefore slily try to spoil a measure. This want of independence has some good results. It enables a small minority of zealous men, backed by a few newspapers, to carry schemes of reform which the majority regard with indifference or hostility. Thus in bodies so depraved as the legislatures of New York and Pennsylvania, bills have lately been passed greatly improving the charters of cities, and even establishing an improved system of appointments to office. A few energetic reformers went to Albany and Harrisburg to strengthen the hands of the little knot of members who battle for good government there, and partly frightened, partly coaxed a majority of the Senate and House into adopting proposals opposed to the interests of professional politicians. Some six years ago, two or three high-minded and sagacious ladies obtained by their presence at Albany the introduction of valuable reforms into the charitable institutions of New York city. The ignorance and heedlessness of the "professionals," who do not always see the results of legislative changes, and do not look forward beyond the next few months, help to make such triumphs possible; and thus, as the Bible tells us that the wrath of man shall praise God, the faults of politicians are turned to work for righteousness.

In the recent legislation of many States, especially Western States, there is a singular mixture of philanthropy and humanitarianism with the folly and jobbery which have been described already, like threads of gold and silver woven across a warp of dirty sacking. Every year sees bills passed to restrict the sale of liquor, to prevent the sale of indecent or otherwise demoralizing literature, to protect women and children, to stamp out

lotteries and gambling houses, to improve the care of the blind, the insane, and the poor, which testify to a warm and increasing interest in all good works. These measures are to be explained, not merely by that power which an active and compact minority enjoys of getting its own way against a crowd of men bent each on his own private gain, and therefore not working together for other purposes, but also by the real sympathy which many of the legislators, especially in the rural districts, feel for morality and for suffering. Even the corrupt politicians of Albany were moved by the appeals of the philanthropic ladies to whom I have referred; much more then would it be an error to think of the average legislator as a bad man, merely because he will join in a job, or deal unfairly with a railroad. The moral standard of Western America is not quite the same as that of England, just as the standard of England differs from that of Germany or France. It is both higher and lower. Some sins excite more anger or disgust than they do in England; some are more lightly forgiven, or more quickly forgotten. Laxity in the discharge of a political trust belongs to the latter category. The newspapers accuse everybody; the ordinary citizen can seldom tell who is innocent and who is guilty. He makes a sort of compromise in his own mind by thinking nobody quite black, but everybody gray. And he goes on to think that what everybody does cannot be very sinful.

CHAPTER XLV

REMEDIES FOR THE FAULTS OF STATE GOVERNMENTS

THE defects in State governments, which our examination of their working has disclosed, are not those we should have expected. It might have been predicted, and it was at one time believed, that these authorities, consumed by jealousy and stimulated by ambition, would have been engaged in constant efforts to extend the sphere of their action and encroach on the National government. This does not happen, and seems most unlikely to happen. The people of each State are now not more attached to the government of their own commonwealth than to the Federal government of the nation, whose growth has made even the greatest State seem insignificant beside it.

A study of the frame of State government, in which the executive department is absolutely severed from the legislative, might have suggested that the former would become too independent, misusing its powers for personal or party purposes, while public business would suffer from the want of concert between the two great authorities, that which makes and that which carries out the law.

This also has proved in practice to be no serious evil. The legislature might indeed conceivably work better if the governor, or some of his chief officials, could sit in it

and exercise an influence on its deliberations. Such an adaptation of the English cabinet system has, however, never been thought of for American States; and the example of the Provincial legislatures of Canada, in each of which there is a responsible ministry sitting in the legislature, does not seem to recommend it for imitation. Those who founded the State governments did not desire to place any executive leaders in a representative assembly. Probably they were rather inclined to fear that the governor, not being accountable to the legislature, would retain too great an independence. The recent creation of various administrative officers or Boards has gone some way to meet the difficulties which the incompetence of the legislatures causes, for these officers or Boards frequently prepare bills which some member of the legislature introduces, and which are put through without opposition, perhaps even without notice, except from a handful of members. On the whole, the executive arrangements of the State work well, though they might, in the opinion of some judicious publicists, be improved by vesting the appointment of the chief officials in the governor, instead of leaving it to direct popular election. This would tend to give more unity of purpose and action to the administration. The collisions which occur in practice between the governor and the legislature relate chiefly to appointments, that is to say, to personal matters, not involving issues of State policy.

The real blemishes in the system of State government are all found in the composition or conduct of the legislatures. They are the following:—

Inferiority in point of knowledge, of skill, and sometimes of conscience, of the bulk of the men who fill these bodies.

Improvidence in matters of finance.

Heedlessness in passing administrative bills.

Want of proper methods for dealing with local and special bills.

Failure of public opinion adequately to control legislation, and particularly special bills.

The practical result of these blemishes has been to create a large mass of State and local indebtedness which ought never to have been incurred, to allow foolish experiments in law-making to be tried, and to sanction a vast mass of private enterprises, in which public rights and public interests become the sport of speculators, or a source of gain to monopolists, with the incidental consequence of demoralizing the legislators themselves and creating an often unjust prejudice against all corporate undertakings.

What are the checks or remedies which have been provided to limit or suppress these evils? Any one who has followed the account given of the men who compose the legislatures and the methods they follow will have felt that these checks must be considerable, else the results would have been worse than those we see. All remedies are directed against the legislative power, and may be arranged under four heads.

First, there is the division of the legislature into two houses. A job may have been smuggled through one house, but the money needed to push it through the other may be wanting. Some wild scheme, professing to benefit the farmers, or the cattlemen, or the railroad employés, may, during its passage through the Assembly, rouse enough attention from sensible people to enable them to stop it in the Senate. The mere tendency of two chambers to disagree with one another is deemed a benefit by those who hold, as the Americans do, that

every new measure is *prima facie* likely to do more harm than good. Most bills are bad—*ergo*, kill as many as you can. Each house, moreover, has, even in such demoralized State legislatures as those of New York or Pennsylvania, a satisfaction, if not an interest, in unveiling the tricks of the other.

Secondly, there is the veto of the governor. How much the Americans value this appears from the fact that, whereas in 1789 there was only one State, Massachusetts, which vested this power in the chief magistrate, all of the present thirty-eight States except four (only one of these a new State) give it to him. Some Constitutions contain the salutary provision that the governor may reject one or more items of an appropriation bill while approving the bill as a whole; and this has been found to strengthen his hands immensely in checking the waste of public money on bad enterprises. This veto power, the great stand-by of the people of the States, illustrates admirably the merits of concentrated responsibility. The citizens, in choosing the governor to represent the collective authority of the whole State, lay on him the duty of examining every bill on its merits. He cannot shelter himself behind the will of the representatives of the people, because he is appointed to watch and check those representatives as a policeman watches a suspect. He is bound to reject the bill, not only if it seems to him to infringe the Constitution of the State, but also if he thinks it in any wise injurious to the public, on pain of being himself suspected of carelessness, or of complicity in some corrupt design. The legislature may, of course, pass the bill over his veto by a two-thirds vote; but although there may exist a two-thirds majority in favour of the measure, they may fear, after the veto has turned the lamp of

public opinion upon it, to take so strong a step. There are, of course, great differences between one governor and another, as well as between one State and another, as regards the honesty with which the power is exercised, for it may be, and sometimes is, used by a 'Ring' governor to defeat measures of reform. But it is a real and effective power everywhere; and in such a State as New York, where the importance of the office often secures the election of an able and courageous man, it has rendered inestimable services.[1]

Thirdly, there are limitations imposed on the competence of the legislature. In the last chapter but one some of these limitations have been mentioned, the most numerous, and at present the most important of which relate to special and local (or what would be called in England "private") bills. I have remarked that these bills, while they destroy the harmony and simplicity of the law, and waste the time of the legislature, are also a fertile source of jobbery.[2] To expunge

[1] It may be suggested that the existence of this ultimate remedy tends to make good members relax their opposition to bad bills, because they know that the veto will kill them. This sometimes happens, but is a less evil than the disuse of the veto would be.

[2] "In twelve States the legislature is forbidden to create any corporation whatever, municipalities included, except by general law, and in thirteen others to create by special Act any except municipal corporations, or those to which no other law is applicable. In some States corporations can be created by special Act only for municipal, charitable, or reformatory purposes. Such provisions are not intended to discourage the formation of private corporations. On the contrary, in all these States general laws exist under which they can be formed with great facility. Indeed the defects in some of these statutes, and their failure to provide safeguards against some at least of the very evils which they were intended to meet, might well suggest to legislators the question whether in avoiding the Scylla of special legislation they have not been drawn into the Charybdis of franchises indiscriminately bestowed. Perhaps the time will come when recommendations such as those urged by the New York railroad commission will be acted on, and the promoters of a new railroad will be obliged to furnish some better reason for its existence, and for their exercising the sovereign power of eminent domain, than the chance of forcing

them or restrict them to cases where a special statute was really needed, would be a great benefit. To some extent this has been effected by the constitutional prohibitions I have described. Illinois, for instance, has by such prohibitions reduced her sessional statutes to about 300 pages, and Iowa averages only 200-250 pages, whereas the Wisconsin statutes of 1885 reached 2000 pages, there being in that State far less effective restrictions.[1] But the powers of evil do not yield without a battle. All sorts of evasions are tried, and some succeed. Suppose, for instance, that there is a prohibition in the Constitution of New York to pass any but general laws relating to the government of cities. An Act is passed which is expressed to apply to cities with a population exceeding one hundred thousand but less than two hundred thousand. There happens to be only one such city in the State, viz. Buffalo, but as there might be more, the law is general, and escapes the prohibition.

I owe to the kindness of a legal friend a very recent instance of another way in which the provisions against special legislation are evaded, viz. by passing Acts

a company already established to buy them out—or, failing that, the alternative of being sold out under foreclosure, pending a receivership."—Hitchcock, *State Constitutions*, p. 36.

"The legislature which can grant or withhold chartered privileges at pleasure wields an immense power. And it will also readily be seen what a great field for favouritism and jobbery exists, when special Acts of incorporation are required for each case in which special favours and special privileges may be given away by a legislature that may be corruptly influenced, without imposing any reciprocal obligation on the corporation. It will be safe to say that fully two-thirds of the lobbyism, jobbery, and log-rolling, the fraud and trickery that are common to our State legislatures, is due to this power of creating private corporations."—Ford, *Citizens' Manual*, ii. p. 68.

[1] That the evil of special legislation is generally felt to be serious is proved among other things by the disabilities in this regard which Congressional statutes have imposed upon the legislatures of the Territories.

which, because they purport to amend general Acts, are themselves deemed general. The Constitution of New York prohibits the legislature from passing any private or local Act incorporating villages, or providing for building bridges. A general Act is passed in 1885 for the incorporation of villages, with general provisions as to bridges. Next year the following Act is passed, which I give verbatim. It amends the Act of 1885, by taking out of it all the counties in the State except Westchester, and then excludes application of the Act to two towns in Westchester. It is thus doubly a "private or local Act," but the prohibition of the Constitution is got round.

CHAP. 556.

AN ACT to amend chapter two hundred and ninety-one of the laws of eighteen hundred and seventy, entitled "An Act for the Incorporation of Villages."

Passed June 4, 1886; three-fifths being present. The People of the State of New York, represented in Senate and Assembly, do enact as follows:—

Section 1.—Section two of chapter four hundred and fifty of the laws of eighteen hundred and eighty-five, is hereby amended so as to read as follows:—

Village Incorporation Act of 1885, as to bridges, to apply only to parts o Westchester County.

Section 2.—All of the counties in this State are hereby exempted from the provisions of this Act except the county of Westchester, but nothing in this Act contained shall be construed so as to apply to the towns of Greenburgh and Mount Pleasant in said county of Westchester.

Section 3.—This Act shall take effect immediately.

Where evasions of this kind become frequent the confusion of the statute-book is worse than ever, because

you cannot tell without examination whether an Act is general or special.

The reader will have noticed in the heading of the Act just quoted the words "three-fifths being present." This is one of the numerous safeguards imposed on the procedure of the State legislatures. Among others we find provisions that every bill shall be passed by a certain proportional majority, that it shall be read "fully and distinctly" (whatever that may be deemed to mean), on three different days (Ohio, and other States); that it "shall include only one subject which shall be expressed in its title" (nearly all States); that "no Act shall be revised or amended by mere reference to its title, but the Act revised or section amended shall be set forth at full length" (many States); that "no Act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of such Act, or which shall enact that any existing law, or any part thereof, shall be applicable except by inserting it in such Act" (New York and other States[1]). Sometimes it is provided that no bill shall be introduced into either house within a certain period after the beginning or before the end of the session, so as to prevent bills from being smuggled through in the hurry of the last days.[2]

[1] All these practices which American Constitutions condemn exist in the British Parliament, though the standing orders and the traditions of both Houses prevent them from being seriously harmful. However, the habit of incorporating an earlier statute with a later one by mere reference, certainly tends to confuse the law; and sometimes the inclusion in one statute of wholly different matters operates harshly on persons who have failed to note the minor contents of a bill whose principal purpose does not affect them. The commoners of the New Forest in Hampshire were, some years ago, much surprised to wake up one morning and find that the Crown had smuggled through Parliament, in an Act relating to foreshores in Scotland, a clause which seriously affected their interests.

[2] "A practice has sprung up of evading this constitutional provision by introducing a new bill after the time has expired when it may consti-

The inventive genius of American legislators finds or makes many holes in the net which the people have tried to throw over them by the Constitution. Yet, though there be none of the restrictions and regulations mentioned which is not sometimes violated or evaded, they have, on the whole, worked well. The enemy is held at bay, and a great deal of bad legislation is prevented. Some bills have to be dropped, because too plainly repugnant to the Constitution to be worth carrying farther. The more ignorant members do not always apprehend where the difficulty lies. They can barely read the Constitution, and the nature of its legal operation is as far beyond them as the cause of thunder is beyond cats. A friend of mine who sat for some years in the New York Assembly was once importuned by an Irish member (now in Congress) to support that particular member's little bill. He answered that he could not, because the bill was against the Constitution. "Och, Mr. Robert," was the reply, "shure the Constitootion should never be allowed to come between frinds."

Some bills again it is the duty of the governor to veto, because they violate a Constitutional restriction; while of those that pass him unscathed, a fair number

tutionally be done, as an amendment to some pending bill, the whole of which, except the enacting clause, is struck out to make way for it. Thus, the member who thinks he may have occasion for the introduction of a new bill after the constitutional period has expired, takes care to introduce sham bills in due season, which he can use as stocks to graft upon, and which he uses irrespective of their character or contents. The sham bill is perhaps a bill to incorporate the city of Siam. One of the member's constituents applies to him for legislative permission to construct a dam across the Wild Cat River. Forthwith, by amendment, the bill, entitled a bill to incorporate the city of Siam, has all after the enacting clause stricken out, and it is made to provide, as its sole object, that John Doe may construct a dam across the Wild Cat. With this title, and in this form it is passed; but the house then considerately amends the title to correspond with the purpose of the bill, and the law is passed, and the Constitution at the same time saved!"—Cooley, *Constit. Limit.* p. 169 note.

fall victims to the courts of law. After the explanations given in an earlier chapter, I need only say here that the enforcement of the limitations imposed by a State Constitution necessarily rests with the judges, since it is they who pronounce whether or no a statute has transgressed the bounds which the fundamental instrument sets, or whether a Constitutional amendment has been duly carried.[1]

Some one may remark that there are two material differences between the position of these State judges and that of the Federal judges. The latter are not appointed by a State, and are therefore in a more independent position when any question of conflict between State laws or Constitutions and the Federal Constitution or statutes comes before them. Moreover they hold office for life, whereas the State judge usually holds for a term of years, and has his re-election to think of. Can the State judge then be expected to show himself equally bold in declaring a State statute to be unconstitutional? Will he not offend the legislature, and the party managers who control it, by flying in their faces?

The answer is that although the judge may displease the legislature if he decides against the validity of an unconstitutional statute, he may displease the people if he decides for it; and it is safer to please the people

[1] A remarkable instance of the technical literalism with which the Courts sometimes enforce Constitutional restrictions is afforded by the fate of a recent liquor Prohibition amendment to the Constitution of Iowa. This amendment had been passed by both Houses of the State legislature in two successive legislatures, had been submitted to the people and enacted by a large majority, had been proclaimed by the governor and gone into force. It was subsequently discovered that one House of the first legislature had, through the carelessness of a clerk, neglected to "spread the Amendment in full on its journal," as prescribed by the Constitution. The point being brought before the Supreme Court of Iowa, it was held that the Amendment, owing to this informality, had not been duly passed, and was wholly void.—Dr. A. Shaw, *ut supra*.

than the legislature. The people at large may know little about the matter, but the legal profession know, and are sure to express their opinion. The profession look to the courts to save them and their clients from the heedlessness or improbity of the legislature, and will condemn a judge who fails in this duty. Accordingly, the judges seldom fail. They knock about State statutes most unceremoniously, and they seldom suffer for doing so. In one case only is their position a dangerous one. When the people, possessed by some strong desire or sentiment, have either by the provisions of a new Constitution, or by the force of clamour, driven the legislature to enact some measure meant to cure a pressing ill, they may turn angrily upon the judge who holds that measure to have been unconstitutional. This has several times happened, and is always liable to happen where elective judges hold office for short terms, with the unfortunate result of weakening the fortitude of the judges. In 1786 the supreme court of Rhode Island decided that an Act passed by the legislature was invalid, because contravening the provisions of the Colonial Charter (which was then still the Constitution of the State), securing to every accused person the benefit of trial by jury.[1] The legislature were furious, and proceeded to impeach the judges for disobeying their will. The impeachment failed, but the judges were not re-elected by the legislature when their term of office expired at the end of the year, and

[1] See Vol. I. p. 333. The Act was one for forcing State paper money into circulation by imposing a penalty, recoverable on summary conviction without a jury, on whoever should refuse to receive on the same terms as specie the bills of a State-chartered bank. No question of the United States Constitution could arise, because it did not yet exist. To these Rhode Island judges belongs the credit not only of having resisted a reckless multitude, but of having set the first example in American history of the exercise of a salutary function.

were replaced by a more subservient bench, which held the statute valid. In Ohio, the legislature passed in 1805 an Act which Judge Pease, in a case arising under it, held to be repugnant to the Constitution of Ohio, as well as to the Federal Constitution, and accordingly declined to enforce. In 1808, he and another judge of the supreme court of the State who had concurred with him, were impeached by the House before the Senate of Ohio, but were acquitted. In 1871, the legislature of Illinois passed a law, intending to carry out a provision of the Constitution of 1870, which was held unconstitutional by Judge Lawrence, greatly to the disappointment of the farmers, who had expected valuable results from it. He was not impeached, but when shortly afterwards he sought re-election, he was defeated solely on the ground of this decision.[1] These instances show that the courts have had to fight for their freedom in the discharge of the duty which the Constitutions throw on them. But the paucity of such conflicts shows that this freedom is now generally recognized, and may be deemed, at

[1] I quote from Mr. Hadley's book on railroad transportation (through Dr. Hitchcock's essay already referred to) the following account of the circumstances :—"The Constitutional Convention of Illinois in 1870 made an important declaration concerning State control of railway rates, on the basis of which a law was passed in 1871 establishing a system of maxima. This law was pronounced unconstitutional by Judge Lawrence. The result was that he immediately afterwards failed of re-election, solely on this ground. The defeat of Judge Lawrence showed the true significance of the farmers' movement [the so-called Granger movement]. They were concerned in securing what they felt to be their rights, and were unwilling that any constitutional barrier should be made to defeat the popular will. They had reached the point where they regarded many of the forms of law as mere technicalities. They were dangerously near the point where revolutions begin. But they did not pass the point. The law of 1873 avoided the issue raised by Judge Lawrence against that of 1871. Instead of directly fixing maxima, it provided that rates must be reasonable, and then provided for a commission to fix reasonable rates." The courage of Judge Lawrence was therefore not thrown away ; it cost him his place, but it served the people and vindicated the law.

least for the present, to be placed above the storms of popular passion.[1]

It will be seen from what has been said that the judges are an essential part of the machinery of State government. But they are so simply as judges, and not as invested with political powers or duties. They have not received, any more than the Federal judges, a special commission to restrain the legislature or pronounce on the validity of its acts. There is not a word in the State Constitutions, any more than in the Federal Constitutions, conferring any such right upon the courts, or indeed conferring any other right than all courts of law must necessarily enjoy. When they declare a statute unconstitutional they do so merely in their ordinary function of expounding the law of the State, its fundamental law as well as its laws of inferior authority, just as an English judge might hold an order made by the Queen in Council to be invalid, because in excess of the powers granted by the Act of Parliament under which it was made. It would be as clearly the duty of an English county court judge so to hold as of the highest court of appeal. So it is the duty of the humblest American State judge to decide on the constitutionality of a statute.

So far we have been considering restrictions imposed on the competence of the legislature, or on the methods of its procedure. We now come to the fourth and last of the checks which the prudence of American States imposes. It is a very simple, not to say naïve, one. It consists in limiting the time during which the legislature may sit. Formerly these bodies sat, like the

[1] There have of course been other instances in which judges have been impeached or removed; but I am here dealing only with those in which the ground of complaint was the declaring a legislative act to be invalid.

English Parliament, so long as they had business to do. The business seldom took long. When it was done, the farmers and lawyers naturally wished to go home, and home they went. But when the class of professional politicians grew up, these wholesome tendencies lost their power over a section of the members. Politics was their business, and they had none other to call them back to the domestic hearth.[1] They had even a motive for prolonging the session, because they prolonged their legislative salary, which was usually paid by the day. Thus it became the interest of the taxpayer to shorten the session. His interest, however, was still stronger in cutting short the jobs and improvident bestowal of moneys and franchises in which he found his representatives employed. Accordingly twenty-two States have fixed a number of days beyond which the legislature may not sit. Most of these fix it absolutely; but a few prefer the method of cutting off the pay of their legislators after the prescribed number of days has expired, so that if they do continue to devote themselves still longer to the work of law-making, their virtue shall be its own reward.[2]

[1] The English Parliament found the tendency of members to slip away so strong that in the sixteenth century it passed an Act "that no knight of the shire or burgess do depart before the end of Parliament," which inflicted on the member leaving without the permission of Mr. Speaker, the penalty of losing "all those sums of money which he should or ought to have had for his wages."

[2] Thus the Constitution of Oregon, for instance, gives its members $3 a day, but provides that they shall never receive more than $120 in all, thus practically limiting the session to forty days. Texas is a little more liberal, for her Constitution is content to reduce the pay after sixty days from $5 to $2 per day, at which reduced rate members may apparently go on as long as they please. All the States which fix a limit of time are Southern or Western, except Pennsylvania and Maryland, whose legislatures certainly need every check that can be applied. The forty days session of Georgia may be extended by a two-thirds vote of an absolute majority of each House.

Experience has, however, disclosed a danger in these absolutely limited sessions. It is that of haste and recklessness in rushing bills through without due discussion. Sometimes it happens that a bill introduced in response to a vehement popular demand is carried with a run (so to speak), because the time for considering it cannot be extended, whereas longer consideration would have disclosed its dangers. An ill-framed railway bill was thus lately lost in the Iowa legislature because full discussion (there being no time-limit) brought out its weak points. Hence some States have largely extended their sessions.[1] Thus California has recently lengthened the days during which her legislators may receive pay from 60 to 100; and Colorado in 1885 extended the maximum of her session from 40 to 90 days, also raising legislative pay from $4 to $7 per diem.

Many recent Constitutions have tried another and probably a better expedient than that of limiting the length of sessions. They have made sessions less frequent. At one time every legislature met once a year. Now in all the States but six (all of these six belonging to the original thirteen) it is permitted to meet only once in two years. Within the last ten years, at least six States have changed their annual sessions to biennial. It does not appear that the interests of the commonwealths suffer by this suspension of the action of their chief organ of government. On the contrary, they get on so much better without a legislature that certain bold spirits ask whether the principle might not with advantage be pushed farther. As Mr. Butler says—

"For a people claiming pre-eminence in the sphere

[1] I give what I have been able to ascertain, but may say in passing that it is not easy even in America, and very difficult in Europe, to discover exactly what amendments have been made in the Constitutions of the States.

of popular government, it seems hardly creditable that in their seeming despair of a cure for the chronic evils of legislation, they should be able to mitigate them only by making them intermittent. Under the biennial system the relief enjoyed in what are called the 'off-years' seems to have reconciled the body politic of the several States which have adopted it to the risk of an aggravation of the malady when the legislative year comes round and the old symptoms recur.

"The secretaries of State (of the several States) with whom I have communicated concur in certifying that no public inconvenience is caused by the biennial system; and one of them, of the State of Nebraska, in answer to my query if biennial sessions occasion any public inconvenience, writes 'None whatever. The public interests would be better subserved by having legislative sessions held only once in four years.'"

The Americans seem to reason thus: "Since a legislature is very far gone from righteousness, and of its own nature inclined to do evil, the less chance it has of doing evil the better. If it meets, it will pass bad laws. Let us therefore prevent it from meeting."

They are no doubt right as practical men. They are consistent, as sons of the Puritans, in their application of the doctrine of original sin. But this is a rather pitiful result for self-governing democracy to have arrived at.

The European reader will ask, "Why all these efforts to deal with the symptoms of the malady, instead of striking at the root of the malady itself? Why not reform the legislatures by inducing good men to enter them, and keeping a more constantly vigilant public opinion fixed upon them?"

The answer to this very pertinent question will be found in the chapters of Part III. which follow. I will

only so far anticipate what is there stated as to observe that the better citizens have found it so difficult and troublesome to reform the legislatures that they have concluded to be content with curing such and so many symptoms as they can find medicines for, and waiting to see in what new direction the virus will work. "After all," they say, "the disease, though it is painful and vexing, does not endanger the life of the patient, does not even diminish his strength. The worst that the legislatures can do is to waste some money, and try some foolish experiments from which the good sense of the people will presently withdraw. Every one has his crosses to bear, and ours are comparatively light." All which is true enough, but ignores one important feature in the situation, viz. the fact that the tremendous influence exerted by wealth and the misuse of public rights permitted to capitalists, and especially to companies, have created among the masses of the people ideas which may break out in demands for legislation of a new and dangerous kind.

The survey of the State governments which we have now completed suggests several reflections.

One of these is that the political importance of the States is no longer what it was in the early days of the Republic. Although the States have grown enormously in wealth and population, they have declined relatively to the central government. The excellence of State laws and the merits of a State administration make less difference to the inhabitants than formerly, because the hand of the National government is more frequently felt. The questions which the State deals with, largely as they influence the welfare of the citizen, do not touch his imagination like those which Congress handles, because the latter determine the relations of the Republic to

the rest of the world, and affect all the area that lies between the two oceans. The State set out as an isolated and self-sufficing commonwealth. It is now merely a part of a far grander whole, which seems to be slowly absorbing its functions and stunting its growth, as the great tree stunts the shrubs over which its spreading boughs have begun to cast their shade.

I do not mean to say that the people have ceased to care for their States; far from it. They are proud of their States, even where there may be little to be proud of. That passionate love of competition which possesses English-speaking men, makes them eager that their State should surpass, in the number of the clocks it makes, the hogs it kills, the pumpkins it rears, the neighbouring States, that their particular star should shine at least as brightly as the other thirty-seven in the national flag. But if these commonwealths meant to their citizens what they did in the days of the Revolution, if they commanded an equal measure of their loyalty, and influenced as largely their individual welfare, the State legislatures would not be left to professionals or third-rate men. The truth is that the State has shrivelled up. It retains its old legal powers over the citizens, its old legal rights as against the central government. But it does not interest its citizens as it once did.[1] And as the central government overshadows it in one direction, so the great cities have encroached upon it in another. The population of a single city is sometimes a fourth or a fifth part of the whole population of the State; and

[1] In 1782 Fisher Ames wrote: "Instead of feeling as a nation, a State is our country. We look with indifference, often with hatred, fear, and aversion to the other States."—*Works*, i. p. 113 (quoted by Von Holst). Even in 1811 Josiah Quincy said in Congress: "Sir, I confess it, the first public love of my heart is the Commonwealth of Massachusetts. There is my fireside: there are the tombs of my ancestors."—Putnam's *American Orations*, i. p. 168. No one would speak in that strain now.

city questions interest this population more than State questions do, city officials have begun to rival or even to dwarf State officials.

Observe, however, that while the growth of the Union has relatively dwarfed the State, the absolute increase of the State in population has changed the character of the State itself. In 1790 seven of the thirteen original States had each of them less than 300,000, only one more than 500,000 inhabitants. Now at least twenty-three have more than 1,000,000, and six of these more than 2,000,000. We must expect to find that, in spite of railroads and telegraphs, the individual citizens will know less of one another, will have less personal acquaintance with their leading men, and less personal interest in the affairs of the community than in the old days when the State was no more populous than an English county like Bedford or Somerset. Thus the special advantages of local government have to a large extent vanished from the American States of to-day. They are local bodies in the sense of having no great imperial interests to fire men's minds. They are not local in the sense of giving their members a familiar knowledge and a lively interest in the management of their affairs. Hamilton may have been right in thinking that the large States ought to be subdivided.[1] At any rate it is to this want of direct local interest on the part of the people, that some of the faults of their legislatures may be ascribed.

The chief lesson which a study of the more vicious

[1] On the other hand I have heard it argued that there are some large States in which the mischievous action of the multitude of a great city is held in check by the steadier rural voters. If such States had been subdivided, the subdivision which happened to contain the great city would lie at the mercy of this multitude.

Hamilton's reason seems to have been a fear that the States would be too strong for the National government.

among the State legislatures teaches, is that power does not necessarily bring responsibility in its train. I should be ashamed to write down so bald a platitude, were it not that it is one of those platitudes which are constantly forgotten or ignored. People who know well enough that, in private life, wealth or rank or any other kind of power is as likely to mar a man as to make him, to lower as to raise his sense of duty, have nevertheless contracted the habit of talking as if human nature changed when it entered public life, as if the mere possession of public functions, whether of voting or of legislating, tended of itself to secure their proper exercise. We know that power does not purify men in despotic governments, but we talk as if it did so in free governments. Every one would of course admit, if the point were put flatly to him, that power alone is not enough, but that there must be added to power, in the case of the voter, a direct interest in the choice of good men, in the case of the legislator, responsibility to the voters, in the case of both, a measure of enlightenment and honour. What the legislatures of the worst States show is not merely the need for the existence of a sound public opinion, for such a public opinion exists, but the need for methods by which it can be brought into efficient action upon representatives, who, if they are left to themselves, and are not individually persons with a sense of honour and a character to lose, will be at least as bad in public life as they could be in private. The greatness of the scale on which they act, and of the material interests they control, will do little to inspire them. New York and Pennsylvania are by far the largest and wealthiest States in the Union. Their legislatures are confessedly the worst.

CHAPTER XLVI

STATE POLITICS

In the last preceding chapters I have attempted to describe first the structure of the machinery of State governments, and then this machinery in motion as well as at rest,—that is to say, the actual working of the various departments in their relations to one another. We may now ask, What is the motive power which sets and keeps these wheels and pistons going? What is the steam that drives the machine?

The steam is supplied by the political parties. In speaking of the parties I must, to some slight extent, anticipate what will be more fully explained in the later part of this volume: but it seems worth while to incur this inconvenience for the sake of bringing together all that refers specially to the States, and of completing the picture of their political life.[1]

The States evidently present some singular conditions for the development of a party system. They are self-governing communities with large legislative and administrative powers, existing inside a much greater community of which they are for many purposes inde-

[1] Many readers may find it better to skip this chapter until they have read those which follow (Chapters LIII.-LVI.) upon the history, tenets, and present condition of the great national parties.

pendent. They must have parties, and this community, the Federal Union, has also parties. What is the relation of the one set of parties to the other?

There are three kinds of relations possible, viz.—

Each State might have a party of its own, entirely unconnected with the national parties, but created by State issues—*i.e.* advocating or opposing measures which fall within the exclusive competence of the State.

Each State might have parties which, while based upon State issues, were influenced by the national parties, and in some sort of affiliation with the latter.

The parties in each State might be merely local subdivisions of the national parties, the national issues and organizations swallowing up, or rather pushing aside, the State issues and the organizations formed to deal with them.

The nature of the State governments would lead us to expect to find the first of these relations existing. The sphere of the State is different, some few topics of concurrent jurisdiction excepted, from that of the National government. What the State can deal with, the National government cannot touch. What the National government can deal with lies beyond the province of the State. The State governor and legislature are elected without relation to the President and Congress, and when elected have nothing to do with those authorities. Hence a question fit to be debated and voted upon in Congress can seldom be a question fit to be also debated and voted upon in a State legislature, and the party formed for advocating its passage through Congress will have no scope for similar action within a State, while on the other hand a State party, seeking to carry some State law, will have no motive for approaching Congress, which

can neither help it nor hurt it. The great questions which have divided the Union since its foundation, and on which national parties have been based, have been questions of foreign policy, of the creation of a national bank, of a protective tariff, of the extension of slavery, of the reconstruction of the South after the war. With none of these had a State legislature any title to deal: all lay within the Federal sphere. So at this moment the questions of currency and of the disposal of the surplus, which are among the most important questions before the country, are outside the province of the State governments. We might therefore expect that the State parties would be as distinct from the national parties as are the State governments from the Federal.

The contrary has happened. The national parties have engulfed the State parties. The latter have disappeared absolutely as independent bodies, and survive merely as branches of the national parties, working each in its own State for the tenets and purposes which a national party professes and seeks to attain. So much is this the case that one may say that a State party has rarely any marked local colour, that it is seldom and then but slightly the result of a compromise between State issues and national issues, such as I have indicated in suggesting the second form of possible relation. The national issues have thrown matters of State competence entirely into the shade, and have done so almost from the foundation of the Republic. The local parties which existed in 1789 in most or all of the States were soon absorbed into the Federalists and Democratic Republicans who sprang into life after the adoption of the Federal Constitution.

The results of this phenomenon have been so important that we may stop to examine its causes.

Within four years from their origin, the strife of the two great national parties became intense over the whole Union. From 1793 till 1815 grave issues of foreign policy, complicated with issues of domestic policy, stirred men to fierce passion and strenuous effort. State business, being more commonplace, exciting less feeling, awakening no interest outside State boundaries, fell into the background. The leaders who won fame and followers were national leaders; and a leader came to care for his influence within his State chiefly as a means of gaining strength in the wider national field. Even so restlessly active and versatile a people as the Americans cannot feel warmly about two sets of diverse interests at the same time, cannot create and work simultaneously two distinct and unconnected party organizations. The State, therefore, had, to use the transatlantic phrase, "to take the back seat." Before 1815 the process was complete; the dividing lines between parties in every State were those drawn by national questions. And from 1827 down to 1877 the renewed keenness of party warfare kept these parties constantly on the stretch, and forced them to use all the support they could win in a State for the purposes of the national struggle.

There was one way in which predominance in a State could be so directly used. The Federal senators are chosen by the State legislatures. The party therefore which gains a majority in the State legislature gains two seats in the smaller and more powerful branch of Congress. As parties in Congress are generally pretty equally balanced, this advantage is well worth fighting for, and is a constant spur to the efforts of national politicians to carry the State elections in a particular

State. Besides, in America, above all countries, nothing succeeds like success; and in each State the party which carries the State elections is held likely to carry the elections for the national House of Representatives, and for the President also.

Moreover, there are the offices. The Federal offices in each State are very numerous. They are in the gift of whichever national party happens to be in power, *i.e.* counts among its members the President for the time being. He bestows them upon those who in each State have worked hardest for the national party there. Thus the influence of Washington and its presiding deities is everywhere felt, and even the party which is in a minority in a particular State, and therefore loses its share of the State offices, is cheered and fed by morsels of patronage from the national table. The national parties are in fact all-pervasive, and leave little room for the growth of any other groupings or organizations. A purely State party, indifferent to national issues, would, if it were started now, have no support from outside, would have few posts to bestow, because the State offices are neither numerous nor well paid, could have no pledge of permanence such as the vast mechanism of the national parties provides, would offer little prospect of aiding its leaders to win wealth or fame in the wider theatre of Congress.

Accordingly the national parties have complete possession of the field. In every State from Maine to Texas all State elections for the governorship and other offices are fought on their lines; all State legislatures are divided into members belonging to one or other of them. Every trial of strength in a State election is assumed to presage a similar result in a national election. Every State office is deemed as fitting a reward

for services to the national party as for services in State contests. In fact the whole machinery is worked exactly as if the State were merely a subdivision of the Union for electoral purposes. Yet nearly all the questions which come before State legislatures have nothing whatever to do with the tenets of the national parties, while votes of State legislatures, except in respect of the choice of senators, can neither advance nor retard the progress of any cause which lies within the competence of Congress.

How has this system affected the working of the State governments, and especially of their legislatures?

It has prevented the growth within a State of State parties addressing themselves to the questions which belong to its legislature, and really affect its welfare.

The natural source of a party is a common belief, a common aim and purpose. For this men league themselves together, and agree to act in concert. A State party ought therefore to be formed out of persons who desire the State to do something, or not to do it; to pass such and such a law, to grant money to such and such an object. It is, however, formed with reference to no such aim or purpose, but to matters which the State cannot influence. Hence a singular unreality in the State parties. In the legislatures as well as through the electoral districts they cohere very closely. But this cohesion is of no service or significance for nine-tenths of the questions that come before the legislature for its decision, seeing that such questions are not touched by the platform of either party. Party therefore, does not fulfil its legitimate ends. It does not produce the co-operation of leaders in preparing, of followers in supporting, a measure or line of policy. It does not secure the keen criticism by either side

of the measures or policy advocated by the other. It is an artificial aggregation of persons linked together for purposes unconnected with the work they have to do.

This state of things may seem to possess the advantage of permitting questions to be considered on their merits, apart from that spirit of faction which in England, for instance, disposes the men on one side to reject a proposal of the other side on the score, not of its demerits, but of the quarter it proceeds from. Such an advantage would certainly exist if members were elected to the State legislatures irrespective of party, if the practice was to look out for good men who would manage State business prudently and pass useful laws. This, however, is not the practice. The strength of the national parties prevents it. Every member is elected as a party man; and the experiment of legislatures working without parties has as little chance of being tried in the several States as in Congress itself. There is yet another benefit which the plan seems to promise. The State legislatures may seem a narrow sphere for an enterprising genius, and their work uninteresting to a superior mind. But if they lead into the larger field of national politics, if distinction in them opens the door to a fame and power extending over the country, able men will seek to enter and to shine in the legislatures of the States. This is the same argument as is used by those who defend the practice, now general in England, of fighting municipal and other local elections on party lines. Better men, it is said, are glad to enter the town councils than could otherwise be induced to do so, because in doing so they serve the party, and establish a claim on it, they commend themselves to their fellow-citizens as fit candidates for Parliament. The possible loss of not

getting a good set of town councillors irrespective of party lines is thought to be more than compensated by the certain gain of men whose ambition would overlook a town council, were it not thus made a stage in their political career. This case is the more like that of America because these English municipal bodies have rarely anything to do with the issues which divide the two great English parties. Men are elected to them as Tories or Liberals whose Toryism or Liberalism is utterly indifferent so far as the business of the council goes.

Whether or no this reasoning be sound as regards England, I doubt if the American legislatures gain in efficiency by having only party men in them, and whether the elections would be any worse cared for if party was a secondary idea in the voters' minds. Already these elections are entirely in the hands of party managers, and the people have little say in the matter. Experience in a State legislature certainly gives a politician good chances of seeing behind the scenes, and makes him familiar with the methods employed by professionals. But it affords few opportunities for distinction in the higher walks of public life, and it is as likely to lower as to raise his aptitude for them. However, a good many men find their way into Congress through the State legislatures—though it is no longer the rule that persons chosen Federal senators by those bodies must have served in them—and perhaps the average capacity of members is kept up by the presence of persons who seek to use the State legislature as a stepping-stone to something further. The question is purely speculative. Party has dominated and will dominate all State elections. Under existing conditions the thing cannot be otherwise.

It is, however, obviously impossible to treat as party matters many of the questions that come before the

legislatures. Local and personal bills, which, it will be remembered, occupy by far the larger part of the time and labours of these bodies, do not fall within party lines at all. The only difference the party system makes to them is that a party leader who takes up such a bill has exceptional facilities for putting it through, and that a district which returns a member belonging to the majority has some advantage when trying to secure a benefit for itself. It is the same with appropriations of State funds to any local purpose. Members use their party influence and party affiliations; but the advocacy of such schemes and opposition to them have comparatively little to do with party divisions, and it constantly happens that men of both parties are found combining to carry some project by which they or their constituents will gain. Of course the less reputable a member is, the more apt will he be to enter into "rings" which have nothing to do with politics in their proper sense, the more ready to scheme with any trickster, to whichever party he adheres. Of measures belonging to what may be called genuine legislation, *i.e.* measures for improving the general law and administration of the State, some are so remote from any party issue, and so unlikely to enure to the credit of either party, that they are considered on their merits. A bill, for instance, for improving the State lunatic asylums, or forbidding lotteries, or restricting the freedom of divorce, would have nothing either to hope or to fear from party action. It would be introduced by some member who desired reform for its own sake, and would be passed if this member, having convinced the more enlightened among his colleagues that it would do good, or his colleagues generally that the people wished it, could overcome the difficulties which the pressure of a crowd of competing bills is sure

to place in its way. Other public measures, however, may excite popular feeling, may be demanded by one class or section of opinion and resisted by another. Bills dealing with the sale of intoxicants, or regulating the hours of labour, or attacking railway companies, or prohibiting the sale of oleomargarine as butter, are matters of such keen interest to some one section of the population, that a party will gain support from many citizens by espousing them, and may possibly estrange others. Hence, though such bills have rarely any connection with the tenets of either party, it is worth the while of a party to win votes by throwing its weight for or against them, according as it judges that there is more to gain by taking the one course or the other. In the case of oleomargarine, for instance, there is clearly more to be gained by supporting than by opposing, because the farmers, especially in the agricultural North-West, constitute a much stronger vote than any persons who could suffer by restricting the sale of the substance. We should accordingly expect to find, and should find, both parties competing for the honour of passing such a bill. There would be a race between a number of members, anxious to gain credit for themselves and their friends. Intoxicants open up a more difficult problem. Strong as the Prohibitionists and local option men are in all the northern and western, as well as in some of the southern States, the Germans, not to speak of the Irish and the liquor dealers, are in many States also so strong, and so fond of their beer, that it is a hazardous thing for a party to hoist the anti-liquor flag. Accordingly both parties are apt to fence with this question. Speaking broadly, therefore, these questions of general State legislation are not party questions, though liable at any moment to become so, if one or other party takes them up.

Is there then no such thing as a real State party, agitating or working solely within State limits, and inscribing on its banner a principle or project which State legislation can advance?

Such a party does sometimes arise. In California, for instance, there has long been a strong feeling against the Chinese, and a desire to exclude them. Both Republicans and Democrats were affected by the feeling, and fell in with it. But there sprang up ten or fifteen years ago a third party, which claimed to be specially "anti-Mongolian," while also attacking capitalists and railways; and it lasted for some time, confusing the politics of the State. Questions affecting the canals of the State became at one time a powerful factor in the parties of New York. In Virginia the question of repudiating the State debt gave birth a few years ago to a party which called itself the "Readjusters," and by the help of negro votes carried the State at several elections. In some of the North-western States the farmers associated themselves in societies called "Granges," purporting to be formed for the promotion of agriculture, and created a Granger party, which secured drastic legislation against the railroad companies and other so-called monopolists. And in most States there now exists an active Prohibitionist party, which agitates for the strengthening and better enforcement of laws restricting or forbidding the sale of intoxicants. It deems itself also a national party, since it has an organization which covers a great part of the Union. But its operations are far more active in the States, because the liquor traffic belongs to State legislation.[1] Since, however, it can rarely secure many members in a State legislature, it acts chiefly by in-

[1] Congress has of course power to impose, and has imposed, an excise upon liquor, but this is far from meeting the demands of the temperance party.

fluencing the existing parties, and frightening them into pretending to meet its wishes.

All these groups or factions were or are associated on the basis of some doctrine or practical proposal which they put forward. But it sometimes also happens that, without any such basis, a party is formed in a State inside one of the regular national parties; or, in other words, that the national party in the State splits up into two factions, probably more embittered against each other than against the other regular party. Such State factions, for they hardly deserve to be called parties, generally arise from, or soon become coloured by, the rivalries of leaders, each of whom draws a certain number of politicians with him. New York is the State that has seen most of them; and in it they have tended of late years to grow more distinctly personal. The Hunkers and Barnburners who divided the Democratic party forty years ago, and subsequently passed into the "Hards" and the "Softs," began in genuine differences of opinion about canal management and other State questions.[1] The "Stalwart" and "Half-breed" sections of the Republican party in the same State, whose bitter feuds amused the country a few years ago, were mere factions, each attached to a leader, or group of leaders, but without distinctive principles.

It will be seen from this fact, as well as from others given in the preceding chapter, that the dignity and magnitude of State politics have declined. They have become more pacific in methods, but less serious and more personal in their aims. In old days the State

[1] The names of these factions, the changes they pass through, and the way in which they immediately get involved with the ambitions and antipathies of particular leaders, recall the factions in the Italian cities of the thirteenth and fourteenth centuries, such as the White and Black Guelfs of Florence in the time of Dante.

had real political struggles, in which men sometimes took up arms. There was a rebellion in Massachusetts in 1786-87, which it needed some smart fighting to put down, and another in Rhode Island in 1842, due to the discontent of the masses with the then existing Constitution.[1] The battles of this generation are fought at the polling-booths, though sometimes won in the rooms where the votes are counted by partisan officials. That heads are counted instead of being broken is no doubt an improvement. But these struggles do not always stir the blood of the people as those of the old time did, they seem to evoke less patriotic interest in the State, less public spirit for securing her good government.

This change does not necessarily indicate a feebler sense of political duty. It is due to that shrivelling up of the State to which I referred in last chapter. A century ago the State was a commonwealth comparable to an Italian republic like Bologna or Siena, or one of the German free imperial cities of the middle ages, to Lübeck, for instance, or to Nürnberg, which, though it formed part of the Empire, had a genuine and vigorous political life of its own, in which the faiths, hopes, passions of the citizens were involved. Nowadays the facilities of communication, the movements of trade, the unprecedented diffusion of literature, and, perhaps not least, the dominance of the great national parties, whose

[1] In these miniature civil wars there was a tendency for the city folk to be on one side and the agriculturists on the other, a phenomenon which was observed long ago in Greece, where the aristocratic party lived in the city and the poor in the fields. In the sixth century B.C. the oligarchic poet Theognis mourned over the degradation of political life which had followed the intrusion of the country churls. The hostility of the urban and rural population sometimes recurs in Switzerland. The country people of the canton of Basil fought a bloody battle some years ago with the people of the city, and the little commonwealth had to be subdivided into two, Basil City and Basil Country.

full tide swells all the creeks and inlets of a State no less than the mid channel of national politics at Washington, have drawn the minds of the masses as well as of the more enlightened citizens away from the State legislatures, whose functions have come to seem trivial and their strifes petty.

In saying this I do not mean to withdraw or modify what was said, in an earlier chapter, of the greatness of an American State, and the attachment of its inhabitants to it. Those propositions are, I believe, true of a State as compared to any local division of any European country, the cantons of Switzerland excepted. I am here speaking of a State as compared with the nation, and of men's feelings towards their State to-day as compared with the feelings of a century ago. I am, moreover, speaking not so much of sentimental loyalty to the State, considered as a whole, for this is still strong, but of the practical interest taken in its government. Even in Great Britain many a man is proud of his city, of Edinburgh say, or of Manchester, who takes only the slenderest interest in the management of its current business.

There is indeed some resemblance between the attitude of the inhabitants of a great English town towards their municipal government and that of the people of a State to their State government. The proceedings of English town councils are little followed or regarded either by the wealthier or the poorer residents. The humble voter does not know or care who is mayor. The head of a great mercantile house never thinks of offering himself for such a post. In London the Metropolitan Board of Works raised and spent a vast revenue; but its discussions were commented on in the newspapers only four or five times a year, and very few persons of good social standing were to be found among

its members. Allowing for the contrast between the English bodies, with their strictly limited powers, and the immense competence of an American State legislature, this English phenomenon is sufficiently like those of America to be worth taking as an illustration.

We may accordingly say that the average American voter, belonging to the labouring or farming or shopkeeping class, troubles himself little about the conduct of State business. He votes the party ticket at elections as a good party man, and is pleased when his party wins. When a question comes up which interests him, like that of canal management, or the regulation of railway rates, or a limitation of the hours of labour, he is eager to use his vote, and watches what passes in the legislature. He is sometimes excited over a contest for the governorship, and if the candidate of the other party is a stronger and more honest man, may possibly desert his party on that one issue. But in ordinary times he does not follow the proceedings of the legislature, as indeed how could he? seeing that they are most scantily reported. The politics which he reads by preference are national politics; and especially whatever touches the next presidential election. In State contests that which chiefly fixes his attention is the influence of a State victory on an approaching national contest.

The more educated and thoughtful citizen, especially in great States, like New York and Pennsylvania, is apt to be disgusted by the sordidness of many State politicians and the pettiness of most. He regards Albany and Harrisburg much as he regards a wasps' nest in one of the trees of his suburban garden. The insects eat his fruit, and may sting his children; but it is too much trouble to set up a ladder and try to reach them. Some public-spirited young men have,

however, thrown themselves into the muddy whirlpool of the New York legislature, chiefly for the sake of carrying Acts for the better government of cities. If their tenacity proves equal to their courage, they will gain in time the active support of those who have hitherto stood aloof, regarding State politics as a squabble over offices and jobs. But the prevalence of the rule that a man can be elected only in the district where he lives, renders it difficult to create a reforming party in a legislature, so the men who, instead of shrugging their shoulders put them to the wheel, generally prefer to carry their energies into the field of national politics, thinking that larger and swifter results are to be obtained there, because victories achieved in and through the National government have an immediate moral influence upon many States at once, whereas reforms in New York make no great difference to Pennsylvania or Ohio.

A European observer, sympathetic with the aims of the reformers, is inclined to think that the battle for honest government ought to be fought everywhere, in State legislatures and city councils as well as in the national elections and in the press, and is at first surprised that so much effort should be needed to secure what all good citizens, to whichever party they belong, might be expected to work for. But he would be indeed a self-confident European who should fancy he had discovered anything which had not already occurred to his shrewd American friends; and the longer such an observer studies the problem, the better does he learn to appreciate the difficulties which the system of party organization, which I must presently proceed to describe, throws in the way of all reforming efforts.

CHAPTER XLVII

THE TERRITORIES

Of the 3,501,404 square miles which constitute the area of the United States, 2,040,780 are included within the bounds of the thirty-eight States whose government has been described in the last preceding chapters. The 1,460,624 square miles which remain fall into the three following divisions:—

Eight organized Territories, viz. Dakota, Wyoming, Montana, Idaho, Washington, Utah, Arizona, New Mexico . . .	859,325	square miles.
Two unorganized Territories, viz.		
Alaska . . .	531,409	do.
Indian territory W. of Arkansas	69,830	do.
The Federal district of Columbia	70	do.

Of these the three latter may be dismissed in a word or two. The District of Columbia is a piece of land set apart to contain the city of Washington, which is the seat of the Federal government. It is governed by three commissioners appointed by the President, and has no local legislature nor municipal government, the only legislative authority being Congress.

Alaska (population in 1880, 30,178, of whom 392 were whites) and the Indian territory are also under

the direct authority of officers appointed by the President and of laws passed by Congress. Both are chiefly inhabited by Indian tribes, some of which, however, in the Indian Territory, and particularly the Cherokees, have made considerable progress in civilization.[1] Neither region is likely for a long time to come to receive regular political institutions.

The eight organized Territories form a broad belt of country extending from Canada on the north to Mexico on the south, and separating the States of the Mississippi valley from those of the Pacific slope. They require a somewhat fuller description, because they present an interesting form of autonomy or local self-government, differing from that which exists in the several States, and in some points more akin to that of the self-governing colonies of Great Britain. This form has in each Territory been created by Federal statutes, beginning with the great Ordinance for the Government of the Territory of the United States north-west of the River Ohio, passed by the Congress of the Confederation in 1787. Since that year many Territories have been organized under different statutes and on different plans out of the western dominions of the United States, under the general power conferred upon Congress by the Federal Constitution (Art. iv. § 3). Most of these Territories have now become States, but there remain

[1] There are five civilized tribes in this territory, Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles. "Each tribe manages its own affairs under a constitution modelled upon that of the United States. Each has a common school system, including schools for advanced instruction, all supported by the Indians themselves. The agent of the National Indian Defence Association says that there is not in the Cherokee Nation a single Indian of either sex over fifteen years of age who cannot read or write."—*Report of the U.S. Commissioner of Education*, 1886. The total population of the Indian Territory is estimated at from 60,000 to 75,000; the total number of tribal Indians in the United States (excluding Alaska) at 250,000 besides 66,407 non-tribal (census of 1880).

the eight already mentioned. At first local legislative power was vested in the Governor and the judges; it is now exercised by an elective legislature. The present organization of these eight is in most respects identical; and in describing it I shall for the sake of brevity ignore minor differences.

The fundamental law of every Territory, as of every State, is the Federal Constitution; but whereas every State has also its own popularly enacted State Constitution, the Territories are not regulated by any similar instruments, which for them are replaced by the Federal statutes passed by Congress establishing their government and prescribing its form. However, some Territories have created a sort of rudimentary constitution for themselves by enacting a Bill of Rights.[1]

In every Territory, as in every State, the executive legislative and judicial departments are kept distinct. The Executive consists of a governor, appointed for four years by the President of the United States, with the consent of the Senate, and removable by the President, together with a secretary, treasurer, auditor, and usually also a superintendent of public instruction, and a librarian. The governor commands the militia, and has a veto upon the acts of the legislature, which, however, may (except in Utah and Arizona) be overriden by a two-thirds majority in each house. He is responsible to the Federal government, and reports yearly to the President on the condition of the Territory, often making his report a sort of prospectus in which the advantages which his dominions offer to intending immigrants are fondly set forth. He also sends a message to the

[1] Arizona in providing that her Bill of Rights shall be changeable only by the vote of a majority of all the members elected to the Territorial legislature gives it a species of rigidity.

legislature at the beginning of each session. Important as the post of Governor is, it is often bestowed as a mere piece of party patronage, with no great regard to the fitness of the appointee.

The Legislature is composed of two Houses, a Council, consisting of twelve persons (in Dakota of twenty-four), and a House of Representatives of twenty-four persons (in Dakota of forty-eight), elected by districts. Each is elected by the voters of the Territory for two years, and sits only once in that period. The session is limited (by Federal statutes) to sixty days, and the salary of a member is $4 per day. The Houses work much like those in the States, doing the bulk of their business by standing committees, and frequently suspending their rules to run measures through with little or no debate. The electoral franchise is left to be fixed by Territorial statute, but Federal statutes prescribe that every member shall be resident in the district he represents. The sphere of legislation allowed to the legislature is wide, indeed practically as wide as that enjoyed by the legislature of a State, but subject to certain Federal restrictions.[1] It is subject also to the still more important right of Congress to annul or modify by its own statutes any Territorial act. In some Territories every act must

[1] Revised Statutes of U.S. of 1878, § 1851.—"The legislative power of every Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed on the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents."

§ 1889.—"The legislative assemblies of the several Territories shall not grant private charters or especial privileges, but they may, by general incorporation acts, permit persons to associate themselves together" for various industrial and benevolent purposes specified. Other restrictions have been imposed by subsequent statutes. See especially Acts of 1886, chap. 818, § 5.

be submitted to Congress for its approval, and, if disapproved, is of no effect; in others submission is not required. But in all Congress may exercise without stint its power to override the statutes passed by a Territorial legislature, as the British Parliament may override those of a self-governing colony. This power is not largely or often exercised. The most remarkable instance has been furnished by Utah, where congressional legislation has had a hard fight in breaking down polygamy, finding it necessary even to impose a test oath upon voters.

The Judiciary consists of three or more judges of a Supreme Court, appointed for four years by the President, with the consent of the Senate (salary $3000), together with a U.S. district attorney and a U.S. marshal. The law they administer is partly Federal, all Federal statutes being construed to take effect, where properly applicable, in the Territories, partly local, created in each Territory by its own statutes; and appeals, where the sum in dispute is above a certain value, go to the Supreme Federal Court. Although these courts are created by Congress in pursuance of its general sovereignty—they do not fall within the provisions of the Constitution for a Federal judiciary—the Territorial legislature is allowed to regulate their practice and procedure. The expenses of Territorial governments are borne by the Federal treasury.

The Territories send neither senators nor representatives to Congress, nor do they take part in presidential elections. The House of Representatives, under a statute, admits a delegate from each of them to sit and speak, but of course not to vote, because the right of voting in Congress depends on the Federal Constitution. The position of a citizen in a Territory is therefore a peculiar one. What may be called his private or passive

citizenship is complete: he has all the immunities and benefits which any other American citizen enjoys. But the public or active side is wanting, so far as the National government is concerned, although complete for local purposes. He is in the position of an Australian subject of the British Crown, who has full British citizenship as respects private civil rights, and a share in the government of his own colony, but does not participate in the government of the British empire at large.[1] It may seem inconsistent with principle that citizens should be taxed by a government in whose legislature they are not represented; but the practical objections to giving the full rights of States to these comparatively rude communities outweigh any such theoretical difficulties. It must moreover be remembered that a Territory, which may be called an inchoate or rudimentary State, looks forward to become a complete State. When its population becomes equal to that of an average congressional district, its claim to be admitted as a State is strong, and in the absence of specific objections will be granted. Congress, however, has absolute discretion in the matter, and often uses its discretion under party political motives. Nevada was admitted to be a State when its population was only about 20,000. It subsequently rose to 62,000, but has now declined to about 40,000. Utah and New Mexico, the former with 143,963, the latter with 119,565 inhabitants, at the last census (1880), have been refused admission, the population of the latter being largely of Mexican blood, while the former is deemed, on account of the strength and peculiar institutions of the Mormon Church, not fit for that

[1] The Romans drew a somewhat similar distinction between the private rights of citizenship and the public rights, which included the suffrage and eligibility to office.

emancipation from the tutelage of Congress which its erection into a State would confer. When Congress resolves to turn a Territory into a State, it usually passes an enabling act, under which the inhabitants elect a Constitutional Convention, which frames a draft constitution; and when this has been submitted to and accepted by the voters of the Territory, the act of Congress takes effect: the Territory is transformed into a State, and proceeds to send its senators and representatives to Congress in the usual way. The enabling act may prescribe conditions to be fulfilled by the State constitution, but cannot legally narrow the right which the citizens of the newly-formed State will enjoy of subsequently modifying that instrument in any way not inconsistent with the provisions of the Federal Constitution.

The arrangements above described seem to work well. Self-government is practically enjoyed by the Territories, despite the supreme authority of Congress, just as it is enjoyed by Canada and the Australian colonies of Great Britain despite the legal right of the British Parliament to legislate for every part of the Queen's dominions. The want of a voice in Congress and presidential elections, and the fact that the governor is set over them by an external power, are not felt to be practical grievances, partly of course because these young communities are too small and too much absorbed in the work of developing the country to be keenly interested in national politics. Their local political life much resembles that of the newer Western States. Both Democrats and Republicans have their regular party organizations, but the business of a Territorial legislature gives little opportunity for any real political controversies, though abundant opportunities for local jobbing.

Before we pass away from the Territories, it may

be proper to say a few words regarding the character and probable future of some among them, because they are the raw material out of which several new States will presently be shaped; and a contemplation of their future suggests some interesting problems.

The largest, the most populous, and in every way the most advanced is Dakota, which lies west of Minnesota, and south of the Canadian province of Manitoba. Its area is 147,700 square miles, greater than that of Prussia, and much greater than that of the United Kingdom (120,500 square miles). Its eastern and southern parts are becoming rapidly filled by an intelligent farming population, largely Scandinavian in blood. The southern half has recently applied to be organized and admitted as a State, and is likely soon to have its wishes gratified.[1] Possessing a vast area of undulating prairie land, well fitted for wheat crops, and at least the eastern part of which receives enough rain to make tillage easy without irrigation, Dakota is evidently destined to be one of the wealthiest and most powerful commonwealths in the Union. Out of it may be carved three States, each equal to Illinois or New York.

Very different is the character of the three Territories of Montana, Wyoming, and Idaho, which lie farther to the west, and are traversed by a number of lofty ranges belonging to the Rocky Mountain system. A comparatively small part of these regions is suited for agriculture, not merely because the surface is mountainous, but owing to the dryness of the climate. There is, however, plenty of pasture land; there are rich mineral deposits,

[1] A poll taken in 1887 showed, however, only a small majority of the inhabitants for the sundering of Dakota with a view to the admission of the southern half as a State, so that it is possible that the Territory may not be divided but admitted as a whole. The southern half has already a population of nearly half a million.

especially in Montana and Idaho, there are in some places extensive forests, though of trees inferior in size to those of the Pacific coast. The population of these Territories is therefore certain to increase rapidly, especially when the fertile lands of Dakota have been filled up.[1] But that population is likely to remain less dense, and less stable in its character, than the Dakotan. It may therefore be doubted whether even Montana, which has the largest area and much the largest quantity of good land, will be fit to become a State for many years to come.

Washington Territory, situated on the shores of the Pacific between Oregon and British Columbia, is in these respects more fortunate. That part of it which lies west of the Cascade Range has a moist and equable climate, much resembling the climate of western England, though somewhat less variable. Many of the familiar genera and even species of British plants reappear on its hill-sides. The forests are by far the finest which the United States possess, and will, though they are being sadly squandered, remain a source of wealth for a century or more to come. I have travelled through many miles of woodland where nearly every tree was over 250 feet high. The eastern half of the Territory, lying on the inland side of the mountains, is very much drier, and with greater extremes of heat and cold; but it is in parts extremely fertile. To all appearances Washington, which had in 1880 a population of 75,000, having more than trebled since 1870, will by the end of this century have at least 800,000, and long before then have been admitted as a State.

Utah was, before the arrival of the Mormons in 1848,

[1] In 1880 these three Territories had only about 92,000 people between them.

a desert, and indeed an arid desert, whose lower grounds were covered with that growth of alkaline plants which the Americans call sage-brush.[1] The patient labour of the Saints, directed, at least during the pontificate of Brigham Young, by an able and vigilant autocracy, has transformed the tracts lying along the banks of streams into fertile grain, vegetable, and fruit farms. The water which descends from the mountains is turned over the level ground; the alkaline substances are soon washed out of the soil, and nothing more than irrigation is needed to produce excellent crops. After this process had advanced some way the discovery of rich silver mines drew in a swarm of Gentile colonists, and the non-Mormon population of some districts is now considerable. As Utah had in 1880, 144,000 inhabitants, it would long ago have been admitted as a State but for the desire of Congress to retain complete legislative control, and thereby to stamp out polygamy. This object seems at last not unlikely to be attained, and although much of the Territory is likely to remain barren and uninhabited, enough is fit for tillage and for dairy-farming to give it a prospect of supporting a large settled population.

New Mexico, with an area larger than the United Kingdom (population in 1880, 120,000), is still largely peopled by Indo-Spanish Mexicans,[2] who speak Spanish, and are obviously ill fitted for the self-government which organization as a State implies. Water is too scarce and the soil too hilly to make agriculture generally available. The same remark applies to Arizona, the sides of whose

[1] The so-called sage-brush plants are not species of what in England is called sage (Salvia) but mostly belong to the order Compositae, which is unusually strong in America. Something like a third of the total phaenogamous genera of the United States have been estimated to belong to it.

[2] There are also about 10,000 Indians, some of them settled and comparatively civilized. It is here that the so-called "pueblos" are found, so interesting to the ethnologist.

splendid mountain groups are barren, and most of whose plains support only a scanty vegetation. Both Territories are rich in minerals, but a mining population is not only apt to be disorderly, but is fluctuating, moving from camp to camp as richer deposits are discovered or old veins worked out. It seems doubtful, therefore, whether any one of the five mining and ranching Territories (Montana, Idaho, Wyoming, New Mexico, Arizona) is likely to be formed into a State at any presently assignable date. The time must come when the increase of population in the region immediately to the east of the Rocky Mountains will turn a fuller stream of immigration into these less promising regions, and bring under irrigation culture large tracts which are now not worth working. No one can yet say when that time will arrive. Till it arrives it will be for the benefit of these Territories themselves that they should remain content with that limited and qualified form of self-government which they now enjoy, and under which they can practically legislate for their own peculiar conditions with sufficient freedom.

Europeans may, however, ask why the theory of American democracy, which deems all citizens entitled to a voice in the National government, should not at least so far prevail as to give the inhabitants of the Territories the right of suffrage in congressional and presidential elections. "Does not," he may say, "the fact that each sends a delegate, though a voteless delegate, to the House of Representatives and two delegates to the National Nominating Conventions (to be hereafter described) imply that the unenfranchised position of the residents in a Territory is felt to be indefensible in theory?"

This is true. If it were possible under the Federal Constitution to admit Territorial residents to active Federal

citizenship—that is to say, to Federal suffrage—admitted they would be. But the Union is a union of States. It knows no representatives in Congress, no electors for the Presidency, except those chosen in States by State voters. The only means of granting Federal suffrage to citizens in a Territory would be to turn the Territory into a State. This would confer a power of self-government, guaranteed by the Federal Constitution, for which the Territory might be still unfit. But it would do still more. It would entitle this possibly small and rude community to send two senators to the Federal Senate who would there have as much weight as the two senators from New York with its six millions of people. This is a result from which Congress may fairly recoil. And a practical illustration of the evils to be feared has been afforded by the case of Nevada, a State whose inhabitants number only about 40,000, and which is really a group of burnt-out mining camps. Its population is obviously unworthy of the privilege of sending two men to the Senate, and has in fact allowed itself to sink, for political purposes, into a sort of rotten borough which can be controlled or purchased by the leaders of a Silver Ring. It would evidently have been better to allow Nevada to remain in the condition of a Territory till a large settled and orderly community had occupied her surface, which is at present a parched and dismal desert, in which the streams descending from the eastern slope of the Sierra Nevada soon lose themselves in lakes or marshes. On a review of the whole matter it may safely be said that the American scheme of Territorial government, though it suffers from the occasional incompetence of the Governor, and is inconsistent with democratic theory, has in practice worked well, and gives little ground for discontent even to the inhabitants of the Territories themselves.

CHAPTER XLVIII

LOCAL GOVERNMENT

THIS is the place for an account of local government in the United States, because it is a matter regulated not by Federal law but by the several States and Territories, each of which establishes such local authorities, rural and urban, as the people of the State or Territory desire, and invests them with the requisite powers. But this very fact indicates the immensity of the subject. Each State has its own system of local areas and authorities, created and worked under its own laws; and though these systems agree in many points, they differ in so many others, that a whole volume would be needed to give even a summary view of their peculiarities. All I can here attempt is to distinguish the leading types of local government to be found in the United States, to describe the prominent features of each type, and to explain the influence which the large scope and popular character of local administration exercise upon the general life and well-being of the American people.

Three types of rural local government are discernible in America. The first is characterized by its unit, the Town or Township, and exists in the six New England States. The second is characterized by a much larger unit, the county, and prevails in the southern States. The third combines some features of the first with some of

the second, and may be called the mixed system. It is found, under a considerable variety of forms, in the middle and north-western States. The differences of these three types are interesting, not only because of the practical instruction they afford, but also because they spring from original differences in the character of the colonists who settled along the American coast, and in the conditions under which the communities there founded were developed.

The first New England settlers were Puritans in religion, and sometimes inclined to republicanism in politics. They were largely townsfolk, accustomed to municipal life and to vestry meetings. They planted their tiny communities along the sea-shore and the banks of rivers, enclosing them with stockades for protection against the warlike Indians. Each was obliged to be self-sufficing, because divided by rocks and woods from the others. Each had its common pasture on which the inhabitants turned out their cattle, and which officers were elected to manage. Each was a religious as well as a civil body politic, gathered round the church as its centre; and the equality which prevailed in the congregation prevailed also in civil affairs, the whole community meeting under a president or moderator to discuss affairs of common interest. Each such settlement was called a Town or Township, and was in fact a miniature commonwealth, exercising a practical sovereignty over the property and persons of its members—for there was as yet no State, and the distant home government scarcely cared to interfere — but exercising it on thoroughly democratic principles. Its centre was a group of dwellings, often surrounded by a fence or wall, but it included a rural area of several square miles, over which farmhouses and clusters of houses began to spring up when the

Indians retired. The name "town" covered the whole of this area, which was never too large for all the inhabitants to come together to a central place of meeting. This town organization remained strong and close, the colonists being men of narrow means, and held together in each settlement by the needs of defence. And though presently the towns became aggregated into counties, and the legislature and governor, first of the whole colony, and, after 1776, of the State, began to exert their superior authority, the towns (which, be it remembered, remained rural communities, making up the whole area of the State) held their ground, and are to this day the true units of political life in New England, the solid foundation of that well-compacted structure of self-government which European philosophers have admired and the new States of the West have sought to reproduce. Till 1821[1] the towns were the only political corporate bodies in Massachusetts, and till 1857 they formed, as they still form in Connecticut, the basis of representation in her Assembly, each town, however small, returning at least one member. Much of that robust, if somewhat narrow, localism which characterizes the representative system of America is due to this originally distinct and self-sufficing corporate life of the seventeenth-century towns. Nor is it without interest to observe that although they owed much to the conditions which surrounded the early colonists, forcing

[1] Boston continued to be a town governed by a primary assembly of all citizens till 1822; and even then the town-meeting was not quite abolished, for a provision was introduced, intended to satisfy conservative democratic feeling, into the city charter granted by statute in that year, empowering the mayor and aldermen to call general meetings of the citizens qualified to vote in city affairs "to consult upon the common good, to give instructions to their representatives, and to take all lawful means to obtain a redress of any grievances." Such primary assemblies are, however, never now convoked.

them to develop a civic patriotism resembling that of the republics of ancient Greece and Italy, they owed something also to those Teutonic traditions of semi-independent local communities, owning common property, and governing themselves by a primary assembly of all free inhabitants, which the English had brought with them from the Elbe and the Weser, and which had been perpetuated in the practice of many parts of England down till the days of the Stuart kings.[1]

Very different were the circumstances of the Southern colonies. The men who went to Virginia and the Carolinas were not Puritans, nor did they mostly go in families and groups of families from the same neighbourhood. Many were casual adventurers, often belonging to the upper class, Episcopalians in religion, and with no such experience of, or attachment to, local self-government as the men of Massachusetts or Connecticut. They settled in a region where the Indian tribes were comparatively peaceable, and where therefore there was little need of concentration for the purposes of defence. The climate along the coast was somewhat too hot for European labour, so slaves were imported to cultivate the land. Population was thinly scattered; estates were large; the soil was fertile and soon enriched its owners. Thus a semi-feudal society grew up, in which authority naturally fell to the landowners, each of whom was the centre of a group of free dependants as well as the master of an increasing crowd of slaves. There were therefore comparatively few urban communities, and the life of the colony took a rural type. The houses of the planters lay miles apart from one

[1] See upon this subject the essay of Prof. Herbert B. Adams on the "Germanic Origin of New England Towns," in *Johns Hopkins University Studies*, First Series.

another; and when local divisions had to be created, these were made large enough to include a considerable area of territory and number of land-owning gentlemen. They were therefore rural divisions, counties framed on the model of English counties. Smaller circumscriptions there were, such as hundreds and parishes, but the hundred died out,[1] the parish ultimately became a purely ecclesiastical division, and the parish vestry was restricted to ecclesiastical functions, while the county remained the practically important unit of local administration, the unit to which the various functions of government were aggregated, and which, itself controlling minor authorities, was controlled by the State government alone. The affairs of the county were usually managed by a board of elective commissioners, and not, like those of the New England towns, by a primary assembly; and in an aristocratic society the leading planters had of course a predominating influence. Hence this form of local government was not only less democratic, but less stimulating and educative than that which prevailed in the New England States. Nor was the Virginian county, though so much larger than the New England town, ever as important an organism over against the State. It may almost be said, that while a New England State is a combination of towns, a Southern State is from the first an administrative as well as political whole, whose subdivisions, the counties, had never any truly inde-

[1] In Maryland hundreds, which still exist in Delaware, were for a long time the chief administrative divisions. We hear there also of "baronies" and "town-lands," as in Ireland; and Maryland is usually called a "province," while the other settlements are colonies. Among its judicial establishments there were courts of pypowdry (*piè poudré*) and "hustings." See the interesting paper on "Local Institutions in Maryland," by Dr. Wilhelm, in *Johns Hopkins University Studies*, Third Series.

The hundred is a division of small consequence in southern England, but in Lancashire it has some important duties. It repairs the bridges; it is liable for damage done in a riot; and it had its high constable.

pendent life, but were and are mere subdivisions for the convenient dispatch of judicial and financial business.

In the middle States of the Union, Pennsylvania, New Jersey, and New York, settled or conquered by Englishmen some time later than New England, the town and town meeting did not as a rule exist, and the county was the original basis of organization. But as there grew up no planting aristocracy like that of Virginia or the Carolinas, the course of events took in the middle States a different direction. As trade and manufactures grew, population became denser than in the South. New England influenced them, and influenced still more the newer commonwealths which arose in the North-west, such as Ohio and Michigan, into which the surplus population of the East poured. And the result of this influence is seen in the growth through the middle and western States of a mixed system, which presents a sort of compromise between the County system of the South and the Town system of the North-east. There are great differences between the arrangements in one or other of these middle and western States. But it may be said, speaking generally, that in them the county is relatively less important than in the southern States, the township less important than in New England. The county is perhaps to be regarded, at least in New York, Pennsylvania, and Ohio, as the true unit, and the townships (for so they are usually called) as its subdivisions. But the townships are vigorous organisms, which largely restrict the functions of the county authority, and give to local government, especially in the North-west, a character generally similar to that which it wears in New England.

So much for the history of the subject; a history far more interesting in its details than will be supposed

from the rough sketch to which limits of space restrict me. Let us now look at the actual constitution and working of the organs of local government in the three several regions mentioned, beginning with New England and the town system.[1] I will first set forth the dry but necessary outline, reserving comments for the following chapter.

The Town is in rural districts the smallest local circumscription. English readers must be reminded that it is a rural, not an urban community, and that the largest group of houses it contains may be only what would be called in England a hamlet or small village.[2] Its area seldom exceeds five square miles; its population is usually small, averaging less than 3000, but occasionally ranges up to 13,000, and sometimes falls below 200. It is governed by an assembly of all qualified voters resident within its limits, which meets at least once a year, in the spring (a reminiscence of the Easter vestry of England), and from time to time as summoned. There are usually three or four meetings each year. Notice is required to be given at least ten days previously, not only of the hour and place of meeting, but of the business to be brought forward. This assembly has, like the Roman Comitia and the Landes-

[1] In New England the word "town" is the legal and usual one; in the rest of the country "township." I find in Massachusetts one town (Gosnold) with only 152 inhabitants, and one (Brockton) with 13,608. But both in this and other New England States most towns have a population of from 1200 to 2500.

[2] The word Town, which I write with a capital when using it in the American sense, is the Icelandic *tún*, Anglo-Saxon *tûn*, German *zaun*, and seems originally to have meant a hedge, then a hedged or fenced plot or enclosure. In Scotland (where it is pronounced "toon") it still denotes the farmhouse and buildings; in Iceland the manured grass plot, enclosed within a low green bank or raised dyke, which surrounds the baer or farmhouse. In parts of eastern England the chief cluster of houses in a parish is still often called "the town." In the North of England, where the parishes are more frequently larger than they are in the South, the civil divisions of a parish are called townships.

gemeinde in four of the older Swiss Cantons, the power both of electing officials and of legislating. It chooses the selectmen, school committee, and executive officers for the coming year; it enacts bye-laws and ordinances for the regulation of all local affairs; it receives the reports of the selectmen and the several committees, passes their accounts, hears what sums they propose to raise for the expenses of next year, and votes the necessary taxation accordingly, appropriating to the various local purposes —schools, aid to the poor, the repair of highways, and so forth—the sums directed to be levied. Its powers cover the management of the town lands and other property, and all local matters whatsoever, including police and sanitation. Every resident has the right to make, and to support by speech, any proposal. The meeting, which is presided over by a chairman called the Moderator —a name recalling the ecclesiastical assemblies of the English Commonwealth[1]—is held in the town hall, if the Town possesses one, or in the principal church or schoolhouse, but sometimes in the open air. The attendance is usually good; the debates sensible and practical. Much of course depends on the character and size of the population. Where it is of native American stock, and the number of voting citizens is not too great for thorough and calm discussion, no better school of politics can be imagined, nor any method of managing local affairs more certain to prevent jobbery and waste, to stimulate vigilance and breed contentment.[2] When, however, the

[1] The presiding officer in the synods and assemblies of the Scottish Presbyterian Churches is still called the Moderator. This is also the president's title in the synods of the American Presbyterian churches, and in the councils of the Congregationalist churches.

[2] See an interesting account of the town meeting thirty years ago in Mr. J. K. Hosmer's *Life of Samuel Adams*, chap. xxiii. An instructive description of a typical New England Town may be found in a pamphlet entitled *The Town of Groton*, by Dr. S. Green, late Mayor of Boston.

town meeting has grown to exceed seven or eight hundred persons, and still more when any considerable section are strangers, such as the Irish or French Canadians who have latterly poured into New England, the institution works less perfectly, because the multitude is too large for debate, factions are likely to spring up, and the new immigrants, untrained in self-government, become the prey of wire-pullers or petty demagogues. Yet even under these drawbacks those who know the system commend its working, and echo the famous eulogism of Jefferson, who seventy years ago desired to see it transplanted to his own Virginia:

"Those wards called townships in New England are the vital principle of their governments, and have proved themselves the wisest invention ever devised by the wit of man for the perfect exercise of self-government, and for its preservation. . . . As Cato then concluded every speech with the words '*Carthago delenda est*,' so do I every opinion with the injunction "Divide the counties into wards."

The executive of a Town consists of the selectmen, from three to nine in number, usually either three, five, or seven. They are elected annually, and manage all the ordinary business, of course under the directions given them by the last preceding meeting. There is also a Town-clerk, who keeps the records, and minutes the proceedings of the meeting, and is generally also registrar of births and deaths; a treasurer; assessors, who make a valuation of property within the Town for the purposes of taxation; the collector, who gathers the taxes, and divers minor officers, such as hog-reeves[1] (now usually

[1] Mr. R. W. Emerson served in this capacity in his Town, fulfilling the duty understood to devolve on every citizen of accepting an office to which the Town appoints him.

called field drivers), cemetery trustees, library trustees, and so forth, according to local needs. There is always a school committee, with sometimes sub-committees for minor school districts if the Town be a large one. As a rule, these officers and committees are unpaid, though allowed to charge their expenses actually incurred in Town work; and there has generally been no difficulty in getting respectable and competent men to undertake the duties. Town elections are not professedly political, *i.e.* they are not usually fought on party lines, though occasionally party spirit affects them, and a man prominent in his party is more likely to obtain support.[1]

[1] When a Town reaches a certain population it is usually transformed by law into a City; but occasionally, while the City is created as a municipal corporation within the limits of a Town, the Town continues to exist as a distinct organization. A remarkable instance is furnished by the Town and City of New Haven, in Connecticut. New Haven was incorporated as a city in 1784. But it continued to be and is still a town also. Three-fourths of the area of the town and seventeen-eighteenths of its population are within the limits of the city. But the two governments remain completely distinct. The city has its mayor, aldermen, and common council, and its large executive staff. The town meeting elects its selectmen and other officers, 152 in all, receives their reports, orders and appropriates taxes, and so forth. Practically, however, it is so much dwarfed by the city as to attract little attention. Says Mr. Levermore: "This most venerable institution appears to-day in the guise of a gathering of a few citizens, who do the work of as many thousands. The few individuals who are or have been officially interested in the government of the town, meet together, talk over matters in a friendly way, decide what the rate of taxation for the coming year shall be, and adjourn. If others are present, it is generally as spectators rather than as participants. Even if Demos should be present in greater force, he would almost inevitably obey the voice of some well-informed and influential member of the town government of his own party. But citizens of all parties and of all shades of respectability ignore the town meeting and school meeting alike. Not one-seventieth part of the citizens of the town has attended an annual town meeting; they hardly know when it is held. The newspapers give its transactions a scant notice, which some of their subscribers probably read. The actual governing force of the town is therefore an oligarchy in the bosom of a slumbering democracy. But the town is well governed. Its government carries too little spoil to attract those unreliable politicians who infest the city council. If the ruling junto should venture on too lavish a use of the

Next above the Town stands the county. Its area and population vary a good deal. Massachusetts with an area of 8040 square miles has fourteen counties; Rhode Island with 1085 square miles has five; the more thinly peopled Maine, with 29,985 square miles, has sixteen, giving an average of about 1100 square miles to each county on these three States, though in Rhode Island the average is only 217 square miles. Similarly the populations of the counties vary from 4000 to 216,000; the average population being, where there are no large cities, from 20,000 to 40,000.[1] The county was originally an aggregation of Towns for judicial purposes, and is still in the main a judicial district in and for which civil and criminal courts are held, some by county judges, some by State judges, and in and for which certain judicial officers are elected by the people at the polls, who also choose a sheriff and a clerk. Police belongs to the Towns and cities, not to the county within which they lie. The chief administrative officers are the county commissioners, of whom there are three in Massachusetts (elected for three years, one in each year), and county treasurer.[2] They are salaried officers, and have the management of county buildings, such as

town's money, an irresistible check would appear at once. Any twenty citizens could force the selectmen to summon the town together, and the apparent oligarchy would doubtless go down before the awakened people. —"The Town and City Government of New Haven," in *Johns Hopkins University Studies*, Fourth Series.

The student of Roman history will find in this quaint survival of an ancient assembly some resemblance to the *comitia curiata* of Rome under the later Republic, when the lictors met as representatives of the ancient *curiæ* to constitute an assembly for the passing of wills and adoptions. But the American survival is the more vigorous of the two.

[1] The average population of a Massachusetts county is 127,000, the smallest county having only 4300.

[2] In Rhode Island there are none but judicial officers for the counties. In Vermont I find besides judges, a state attorney, high bailiff, and county clerk. In Massachusetts all judges are appointed by the governor.

court-houses and prisons, with power to lay out new highways from town to town, to grant licences, estimate the amount of taxation needed to defray county charges,[1] and apportion the county tax among the towns and cities by whom it is to be levied. But except in this last-mentioned respect the county authority has no power over the Towns, and it will be perceived that while the county commissioners are controlled by the legislature, being limited by statute to certain well-defined administrative functions, there exists nothing in the nature of a county board or other assembly with legislative functions. The functions of the county are in fact of small consequence: it is a judicial district and a highway district and little more.

This New England system resembles that of Old England as the latter stood during the centuries that elapsed between the practical disappearance of the old County Court or Shire Moot and the creation by comparatively recent statutes of such intermediate bodies and authorities as poor-law unions, highway districts and boards, local sanitary authorities. If we compare the New England scheme with that of the England of to-day, we are struck not only by the greater simplicity of the former, but also by the fact that it is the smaller organisms, the Towns, that are most powerful and most highly vitalized. Nearly everything belongs to them, only those duties devolving on the counties which a small organism obviously cannot undertake. An Englishman may remark that the system of self-governing Towns works under the supervision of a body, the State legislature, which can give far closer attention to local affairs than the English parliament

[1] The chief items of county expenditure are those for judicial purposes, including the maintenance of buildings, and for roads and bridges.

has there appeared either a primary assembly or a representative local assembly. All local authorities in the South, and in the States which, like Nevada, Nebraska,[1] and Oregon, may be said to have adopted the county system, are executive officers and nothing more.

The third type is less easy to characterize than either of the two preceding, and the forms under which it appears in the middle and north-western States are even more various than those referable to the second type. Two features mark it. One is the importance and power of the county, which in the history of most of these States appears before any smaller division; the other is the activity of the township, which has more independence and a larger range of competence than under the system of the South. Now of these two features the former is the more conspicuous in one group of States — Pennsylvania, New Jersey, New York, Ohio, Indiana, Iowa; the latter in another group —Michigan, Illinois, Wisconsin, Minnesota, the reason being that the New Englanders, who were often the largest and always the most intelligent and energetic element among the settlers in the more northern of these two State groups, carried with them their attachment to the Town system and their sense of its value, and succeeded, though sometimes not without a struggle, in establishing it in the four great and prosperous commonwealths which form that group. On the other hand, while Pennsylvania, New Jersey, and New York had not (from the causes already stated) started with the Town system, they never adopted it completely; while in Ohio and Indiana the influx of settlers from the Slave States, as well as from New York and Pennsyl-

[1] Nebraska, however, is now beginning to introduce the township system.

vania, gave to the county an early preponderance, which it has since retained. The conflict of the New England element with the Southern element is best seen in Illinois, the northern half of which State was settled by men of New England blood, the southern half by pioneers from Kentucky and Tennessee. The latter, coming first, established the county system, but the New Englanders fought against it, and in the constitutional convention of 1848 carried a provision, embodied in the constitution of that year, and repeated in the present constitution of 1870, whereby any county may adopt a system of township organization "whenever the majority of the legal voters of the county voting at any general election shall so determine."[1] Under this power four-fifths of the 102 counties have now adopted the township system.[2]

Illinois furnishes so good a sample of that system in its newer form that I cannot do better than extract, from a clear and trustworthy writer, the following account of the whole scheme of local self-government in that State, which is fairly typical of the North-west:—

"When the people of a county have voted to adopt the township system, the commissioners proceed to divide the county into towns, making them conform with the congressional or school townships, except in special cases. Every town is invested with corporate capacity to be a party in legal suits, to own and control property, and to make contracts. The annual town meeting of the whole voting population, held on the first Tuesday in April, for the election of

[1] See Constitution of 1870, Art. x. § 5, where a provision is added that any county desiring to forsake township organization may do so by a vote of the electors in the county, in which case it comes under the county system prescribed in the following sections of that article.

[2] Illinois has 102 counties, with an average population, in 1880, of 30,000; Iowa 99 counties, with an average population, in 1880, of 16,500. England (excluding Wales) has 40 counties, with an average population, in 1881, of 615,000.

town officers and the transaction of miscellaneous business, is the central fact in the town government. The following is a summary of what the people may do in town meeting. They may make any orders concerning the acquisition, use, or sale of town property; direct officers in the exercise of their duties; vote taxes for roads and bridges, and for other lawful purposes; vote to institute or defend suits at law; legislate on the subject of noxious weeds, and offer rewards to encourage the extermination of noxious plants and vermin; regulate the running at large of cattle and other animals; establish pounds, and provide for the impounding and sale of stray and trespassing animals; provide public wells and watering-places; enact bye-laws and rules to carry their powers into effect; impose fines and penalties, and apply such fines in any manner conducive to the interests of the town.[1]

"The town officers are a supervisor, who is *ex officio* overseer of the poor, a clerk, an assessor, and a collector, all of whom are chosen annually; three commissioners of highways elected for three years, one retiring every year; and two justices of the peace and two constables, who hold office for four years.

"On the morning appointed for the town meeting the voters assemble, and proceed to choose a moderator, who presides for the day. Balloting for town officers at once begins, the supervisor, collector, and assessor acting as election judges. Every male citizen of the United States who is twenty-one years old, who has resided in the State a year, in the county ninety days, and in the township thirty days, is entitled to vote at town meeting; but a year's residence in the town is required for eligibility to office. At two o'clock the moderator calls the meeting to order for the consideration of business pertaining to those subjects already enumerated. Everything is done by the usual rules and methods of parliamentary bodies. The clerk of the town is secretary of the meeting, and preserves a record of all the proceedings. Special town meetings may be held whenever the supervisor, clerk, or justices, or any two of them, together with fifteen voters, shall have filed with the clerk a statement that a meeting is necessary, for objects which they specify. The clerk then gives public notice in a prescribed way.

[1] There are English analogies to all these powers, but in England some of them are or were exercised in the Manor court and not in the Vestry.

Such special meetings act only upon the subjects named in the call.

"The supervisor is both a town and a county officer. He is general manager of town business, and is also a member of the county board, which is composed of the supervisors of the several towns, and which has general control of the county business. As a town officer, he receives and pays out all town money, excepting the highway and school funds. His financial report is presented by the clerk at town meeting. The latter officer is the custodian of the town's records, books, and papers. The highway commissioners, in their oversight of roads and bridges, are controlled by a large body of statute law, and by the enactments of the town meeting. Highways are maintained by taxes levied on real and personal property, and by a poll-tax of two dollars, exacted from every able-bodied citizen between the ages of twenty-one and fifty. It may be paid in money or in labour under the direction of the commissioners. One of the commissioners is constituted treasurer, and he receives and pays out all road moneys.

"The supervisor acts as overseer of the poor. The law leaves it to be determined by the people of a county whether the separate towns or the county at large shall assume the care of paupers. When the town has the matter in charge, the overseer generally provides for the indigent by a system of out-door relief. If the county supports the poor, the county board is authorised to establish a poor-house and farm for the permanent care of the destitute, and temporary relief is afforded by the overseers in their respective towns, at the county's expense.

"The board of town auditors, composed of the supervisor, the clerk, and the justices, examine all accounts of the supervisor, overseer of poor, and highway commissioners; pass upon all claims and charges against the town, and audit all bills for compensation presented by town officers. The accounts thus audited are kept on file by the clerk for public inspection, and are reported at the next town meeting. The supervisor, assessor, and clerk constitute a Board of Health. The clerk records their doings, and reports them at the meetings of the town.

"No stated salaries are paid to town officers. They are compensated according to a schedule of fixed fees for specific services, or else receive certain *per diem* wages for time actually employed in official duties. The tax collector's emolument is a percentage.

"For school purposes, the township is made a separate and distinct corporation, with the legal style, 'Trustees of Schools of Township ——, Range ——,' according to the number by which the township is designated in the Congressional Survey. The school trustees, three in number, are usually elected with the officers of the civil township at town meetings, and hold office for three years. They organize by choosing one of their number president, and by selecting some fourth person for school treasurer, who shall also be, *ex officio*, their secretary. They have authority to divide the township into school districts. It must be remembered that the township is exactly six miles square. It is the custom to divide it into nine districts, two miles square, and to erect a schoolhouse near the centre of each. As the county roads are, in most instances, constructed on the section lines—and therefore run north and south, east and west, at intervals of a mile—the traveller expects to find a schoolhouse at every alternate crossing. The people who live in these sub-districts elect three school directors, who control the school in their neighbourhood. They are obliged to maintain a free school for not less than five nor more than nine months in every year, are empowered to build and furnish schoolhouses, hire teachers and fix their salaries, and determine what studies shall be taught. They may levy taxes on all the taxable property in their district, but are forbidden to exceed a rate of two per cent for educational or three per cent for building purposes. They certify to the township school treasurer the amount they require, and it is collected as hereafter described. This last-named officer holds all school funds belonging to the township, and pays out on the order of the directors of the several districts.

"The township funds for the support of schools arise from three sources. (1) The proceeds of the school lands given by the United States Government, the interest from which alone may be expended. (2) The State annually levies on all property a tax of one-fifth of one per cent, which constitutes a State school fund, and is divided among the counties in the ratio of their school population, and is further distributed among the townships in the same ratio. (3) Any amount needed in addition to these sums is raised by taxation in the districts under authority of the directors.

"All persons between the ages of six and twenty-one years are entitled to free school privileges. Women are eligible to every school office in the State, and are frequently chosen directors. The

average Illinois county contains sixteen townships. The county government is established at some place designated by the voters, and called the 'county seat.' The corporate powers of the county are exercised by the county board, which, in counties under township organization, is composed of the several town supervisors, while in other counties it consists of three commissioners elected by the people of the whole county. The board manage all county property, funds, and business; erect a court-house, jail, poorhouse, and any necessary buildings; levy county taxes, audit all accounts and claims against the county, and, in counties not under township organization, have general oversight of highways and paupers. Even in counties which have given the care of highways to the townships, the county board may appropriate funds to aid in constructing the more important roads and expensive bridges. The treasurer, sheriff,[1] coroner, and surveyor are county functionaries, who perform the duties usually pertaining to their offices.[2]

"The county superintendent of schools has oversight of all educational matters, advises town trustees and district directors, and collects complete school statistics, which he reports to the county board, and transmits to the State superintendent of public instruction.

"Every county elects a judge, who has full probate jurisdiction, and appoints administrators and guardians. He also has jurisdiction in civil suits at law, involving not more than $1000, in such minor criminal cases as are cognizable by a justice of the peace, and may entertain appeals from justices or police courts. The State is divided into thirteen judicial districts, in each of which the people elect three judges, who constitute a circuit court. The tribunal holds two or more sessions annually in each county within the circuit, and is attended at every term by a grand or petit jury. It has a general original jurisdiction, and hears appeals from the county judge and from justices' courts.

"To complete the judicial system of the State there are four appellate courts and one supreme court of last resort. Taxes

[1] The sheriff is the executive officer of the higher courts, with responsibility for the peace of the county. In case of riot he may call out the county militia.

[2] Ordinary police work, other than judicial, is not a county matter, but left to the township with its constables. In cities, police belongs to the municipal authority, unless committed by some State statute to a special board.

whether for State, county, or town purposes are computed on the basis of the assessment made by the town assessor, and are collected by the town collector. The assessor views and values all real estate, and requires from all persons a true list of their personal property. The assessor, clerk, and supervisor, constitute a town equalizing board, to hear complaints and to adjust and correct the assessment.

"The assessors' books from all the towns then go before the county board, who make such corrections as cause valuations in one town to bear just relation to valuations in the others. The county clerk transmits an abstract of the corrected assessment to the auditor of the State, who places it in the hands of a State board of equalization.

"This board adjust valuations between counties. All taxes are estimated and collected on this finally corrected assessment. The State authorities, the county board, the town supervisors, the highway commissioners, the township school trustees, and the proper officers of incorporated cities and villages, all certify to the county clerk a statement of the amount they require for their several purposes. The clerk prepares a collection-book for each town explaining therein the sum to be raised for each purpose. Having collected the total amount the collector disburses to each proper authority its respective quota. In all elections, whether for President of the United States, representatives in Congress, State officers or county officers, the township constitutes an election precinct, and the supervisor, assessor, and collector sit as the election judges.

"The words 'town' and 'township' signify a territorial division of the county, incorporated for purposes of local government. There remains to be mentioned a very numerous class of municipal corporations known in Illinois statutes as 'villages' and 'cities.' A minimum population of three hundred, occupying not more than two square miles in extent, may by popular vote become incorporated as a 'village,' under provisions of the general law. Six village trustees are chosen, and they make one of their number president, thereby conferring on him the general duties of a mayor. At their discretion the trustees appoint a clerk, a treasurer, a street commissioner, a village constable, and other officers as they deem necessary. The people may elect a police magistrate whose jurisdiction is equal to that of a justice of the peace."[1]

[1] "Local Government in Illinois," by Albert Shaw, LL.D., in *Johns Hopkins University Studies*, Baltimore, 1883.

A similar picture of the town meeting in Michigan is given by another recent authority,—

"The first Monday in April of each year every citizen of the United States twenty-one years of age and upwards who has resided in the State six months, and in the township the ten days preceding, has the right of attending and participating in the meeting. The supervisor, the chief executive officer of the township, presides. He and the justice of the peace whose term of office soonest expires, and the township clerk, constitute the inspectors of election. After the choice of officers for the ensuing year the electors proceed from twelve to one, or three, as the case may require, to the discussion of town business. Complaint is perhaps made that the cattle in a certain part of the township are doing damage by running at large, a bye-law is passed forbidding the same under penalty not exceeding ten dollars.

"A bridge may be wanted in another part of the township, but the inhabitants of that road district cannot bear the expense; the town meeting votes the necessary amount not exceeding the limits of law, for the laws restricting the amount of taxation and indebtedness are very particular in their provisions.

"The electors may regulate the keeping and sale of gunpowder, the licensing of dogs and the maintenance of hospitals, and may order the vaccination of all inhabitants. The voters in town meeting are also to decide how much of the one-mil tax on every dollar of the valuation shall be applied to the purchase of books for the township library, the residue going to schools.

"The annual reports of the various township officers charged with the disbursement of public moneys are also submitted at this time. In short, whatever is local in character and affecting the township only is subject to the control of the people assembled in town meeting.

"Yet we may notice some minor differences between the New England town meeting and its sister in Michigan. In the latter the bye-laws and regulations are less varied in character.

"This is due to the fact that in the West that part of the township where the inhabitants are most numerous, the village, and for whose regulation many laws are necessary, is set off as an incorporated village, just as in nearly all the central and western States. These villages have the privilege, either directly in

village meeting or more often through a council of five or more trustees, of managing their own local affairs, their police, fire department, streets and waterworks. In some States, however, they are considered parts of the township, and as such vote in town meeting on all questions touching township roads, bridges, the poor and schools."[1]

The conspicuous feature of this system is the reappearance of the New England Town meeting, though in a somewhat less primitive and at the same time less perfect form, because the township of the West is a more artificial organism than the rural Town of Massachusetts or Rhode Island, where, until lately, everybody was of English blood, everybody knew everybody else, everybody was educated not only in book learning, but in the traditions of self-government. However, such as it is, the Illinois and Michigan system is spreading. Recent legislation in California, Nebraska, and other western States permits its adoption. It is already established in the magnificent Territory of Dakota, and seems destined to prevail over the whole North-west.[2]

In the proportion to the extent in which a State has adopted the township system the county has tended to decline in importance. It is nevertheless of more consequence in the West than in New England. It has frequently an educational official who inspects the schools, and it raises a tax for aiding schools in the poorer townships. It has duties, which are naturally

[1] *Local Government in Michigan*, by E. W. Bemis, in *J. H. U. Studies*, Baltimore, 1883.

[2] In Switzerland the rural Gemeinde or Commune is the basis of the whole republican system of the Canton. It has charge of the police, the poor, and schools, and owns lands. It has a primary assembly, meeting several times a year, which discusses communal business and elects an administrative council. It resembles in these respects an American Town or Township, but is subject for some purposes to the jurisdiction of an official called the Statthalter, appointed by the Canton for a district comprising a number of communes.

more important in a new than in an old State, of laying out main roads and erecting bridges and other public works. And sometimes it has the oversight of township expenditure.[1] The board of county commissioners consists in Michigan and Illinois of the supervisors of all the townships within the county; in Wisconsin and Minnesota the commissioners are directly chosen at a county election.

I pass to the mixed or compromise system as it appears in the other group of States, of which Pennsylvania, Ohio, Indiana, and Iowa may be taken as samples. In these States we find no Town meeting. Their township may have greater or less power, but its members do not come together in a primary assembly; it elects its local officers, and acts only through and by them. In Ohio there are three township trustees with the entire charge of local affairs, a clerk and a treasurer. In Pennsylvania the township is governed by two or three supervisors, elected for three years, one each year, together with an assessor (for valuation purposes), a town clerk, three auditors, and (where the poor are a township charge) two overseers of

[1] Mr. Bemis says:—"Inasmuch as many of the thousand or more townships of a State lack the political education and conservatism necessary for perfect self-control, since also many through lack of means cannot raise sufficient money for roads, bridges, schools, and the poor, a higher authority is needed, with the power of equalizing the valuation of several contiguous towns, of taxing the whole number for the benefit of the poorer, and of exercising a general oversight over township expenses. . . . The importance of this power is not fully appreciated. For lack of similar provision in Massachusetts, there is scarcely any State or county aid or control of schools. Every town is left to its own resources with poor results [?]. All educators earnestly advocate county and State control of schools, that there may be uniformity of methods, and that the country districts, the nurseries of our great men in the past, may not degenerate. But two influences oppose: the fear of centralization on the part of the small towns which need it most, and the dislike of the rich cities to tax themselves for the country districts."—*Local Government in Michigan*, ut supra, p. 18.

the poor. The supervisors may lay a rate on the township not exceeding one per cent on the valuation of the property within its limits for the repair of roads, highways, and bridges, and the overseers of the poor may, with the consent of two justices,[1] levy a similar tax for the poor. But as the poor are usually a county charge, and as any ratepayer may work out his road tax in labour, township rates amount to very little.

"In Iowa," says Mr. Macy, "the civil township, which is usually six miles square, is a local government for holding elections, repairing roads, testing property, giving relief to the poor, and other business of local interest. Its officers are three trustees, one clerk, a road supervisor for each road district, one assessor, two or more justices of the peace, and two or more constables. The justices and constables are in a sense county officers. Yet they are elected by townships, and if they remove from the township in which they are chosen, they cease to be officers. The trustees are chosen for three years, but their terms of office are so arranged that one is chosen each year. The other officers are chosen for two years. If there is within the limits of the township an incorporated town or city, the law requires that at least one of the justices shall live within the town or city. The voters within the town or city choose a separate assessor. The voters of the city are not allowed to vote for road supervisors nor for the township assessor; they vote for all other township officers. . . .

"The trustees of the township have various duties in the administration of the poor laws. An able-bodied person applying for aid may be required to work upon the streets or highways. If a person who has acquired a legal settlement in the county, and who has no near relatives able to support him, applies to the trustees for aid, it is their duty to look into the case and furnish or refuse relief. If they decide to furnish it, they may do so by sending the person to the county poorhouse, or by giving him what they think needful in food, clothing, medical attendance, or money. If they refuse aid the applicant may go to the county supervisors, and they may order

[1] Justices are elected by the people for five years, and commissioned by the governor of the State.

the trustees to furnish aid; or if the supervisors think the trustees are giving aid unwisely, they may order them to withhold it. In all cases where aid is furnished directly by the trustees to the applicant they are required to send a statement of the expense incurred to the auditor of the county, who presents the bills to the board of supervisors. All bills for the relief of the poor are paid by the county, and the supervisors if they choose may take the entire business out of the hands of the trustees. But in counties where no poorhouse is provided, and where the supervisors make no provision for the poor, the trustees are required to take entire charge of the business. Yet in any case the county must meet the expenses. The trustees are the health officers of the township. They may require persons to be vaccinated; they may require the removal of filth injurious to health; they may adopt bye-laws for preserving the health of the community and enforce them by fine and imprisonment."[1]

In most of these States the county overshadows the township. Taking Pennsylvania as an example, we find each county governed by a board of three commissioners, elected for three years, upon a minority vote system, the elector being allowed to vote for two candidates only. Besides these there are officers, also chosen by popular vote for three years, viz. a sheriff, coroner, prothonotary, registrar of wills, recorder of deeds, treasurer, surveyor, three auditors, clerk of the court, district attorney. Some of these officers are paid by fees, except in counties whose population exceeds 50,000, where all are paid by salary. A county with at least 40,000 inhabitants is a judicial district, and elects its judge for a term of ten years. No new county is to contain less than 400 square miles or 20,000 inhabitants.[2] The county, besides its judicial business and the management of the prisons incident thereto,

[1] *A Government Text-Book for Iowa Schools*, pp. 21-23.

[2] See Constitution of Pennsylvania of 1873, Arts. xiv. xiii. and v. The average population of a county in Pennsylvania was in 1880 64,000. There are sixty-seven.

besides its duties as respects highways and bridges, has educational and usually also poor-law functions; and it levies its county tax and the State taxes through a collector for each township whom it and not the township appoints. It audits the accounts of townships, and has other rights of control over these minor communities exceeding those allowed by Michigan or Illinois.[1] I must not omit to remark that where any local area is not governed by a primary assembly[2] of all its citizens, as in those States where there is no Town meeting, and in all States in respect to counties, a method is frequently provided for taking the judgment of the citizens of the local area, be it township or county, by popular vote at the polls upon a specific question, usually the borrowing of money or the levying of a rate beyond the regular amount. This is an extension to local divisions of the so-called "plebiscitary" or *referendum* method, whose application to State legislation has been discussed in a preceding chapter. It seems to work well, for by providing an exceptional method of meeting exceptional cases, it enables the ordinary powers of executive officials, whether in township or county, to be kept within narrow limits.

Want of space has compelled me to omit from this sketch many details which might interest European

[1] See "Local Government in Pennsylvania," in *J. H. U. Studies*, by E. R. L. Gould, Baltimore, 1883.

[2] As the primary meeting is in England dying out in the form of the parish vestry, so the plebiscitary method seems to be coming in to meet the now more democratic conditions of the country. It is recognized in the Free Library Acts, which provide for taking a poll of all the ratepayers within a given local area to determine whether or no a local rate shall be levied to provide a free public library. And see above (Chapter XXXIX.) as to the proposal to submit to popular vote the question of granting licences for the sale of intoxicating liquors.

students of local government, nor can I attempt to indicate the relations of the rural areas, townships and counties, to the incorporated villages and cities which lie within their compass further than by observing that cities, even the smaller ones, are usually separated from the townships, that is to say, the township government is superseded by the city government, while cities of all grades remain members of the counties, bear their share in county taxation, and join in county elections. Often, however, the constitution of a State contains special provisions to meet the case of a city so large as practically to overshadow or absorb the county, as Chicago does the county of Cook, and Cincinnati the county of Hamilton, and sometimes the city is made a county by itself. Of these villages and other minor municipalities there are various forms in different States. Ohio, for instance, divides her municipal corporations into (*a*) cities, of which there are two classes, the first class containing three grades, the second class four grades; (*b*) villages, also with two classes, the first of from 3000 to 5000 inhabitants, the second of from 200 to 3000; and (*c*) hamlets, incorporated places with less than 200 inhabitants.[1] The principles which govern these organizations are generally the same; the details are infinite, and incapable of being summarized here. Of minor incorporated bodies therefore I say no more. But the larger cities furnish a wide and instructive field of inquiry; and to them three chapters must be devoted.

[1] *Ohio Voters' Manual*, Appendix K. Ohio contains: Cities—1 first class, first grade, 1 first class, second grade, 1 first class, third grade, 2 second class, first grade, 1 second class, second grade, 9 second class, third grade, 23 second class, fourth grade; Villages—34 first class, 395 second class; Hamlets—32, besides 785 unincorporate places or towns mentioned in Secretary of State's Report for 1881.

CHAPTER XLIX

OBSERVATIONS ON LOCAL GOVERNMENT

It may serve to clear up a necessarily intricate description if I add here a few general remarks applicable to all, or nearly all, of the various systems of local government that prevail in the several States of the Union.

I. Following American authorities, I have treated the New England type or system as a distinct one, and referred the North-western States to the mixed type. But the European reader may perhaps figure the three systems most vividly to his mind if he will divide the Union into three zones—Northern, Middle, and Southern. In the northern, which, beginning at the confluence of the Yellowstone and Missouri, stretches east to the Bay of Fundy, and includes the Territory of Dakota and the States of Minnesota, Wisconsin, Illinois, Michigan, and the six New England States, he will find a primary assembly, the Town or township meeting, in preponderant activity as the unit of local government. In the middle zone, stretching from California to New Jersey and New York, inclusive, along the fortieth parallel of latitude, he will find the township dividing with the county the interests and energy of the people. In some States of this zone the county is the more important organism and dwarfs the township; in some the township

seems to be gaining on the county; but all are alike in this, that you cannot lose sight for a moment of either the smaller or the larger area, and that both areas are governed by elected executive officers. The third zone includes all the southern States; in which the county is the predominant organism, though here and there school districts and even townships are growing in significance.

II. Both county and township are, like nearly everything else in America, English institutions which have suffered a sea change. "The Southern county is an attenuated English shire with the towns left out."[1] The northern township is an English parish, a parish of the old seventeenth-century form, in which it was still in full working order as a civil no less than an ecclesiastical organization, holding common property, and often co-extensive with a town. The Town meeting is the English vestry, the selectmen are the churchwardens, or select vestrymen, called back by the conditions of colonial life into an activity fuller than they exerted in England even in the seventeenth century, and far fuller than they now retain.[2] In England local self-government, except as regards the poor law, tended to decay in the smaller (*i.e.* parish or township) areas; the greater part of such administration as these latter needed, fell either to the justices in petty sessions

[1] Professor Macy, "Our Government," an admirable elementary sketch for school use of the structure and functions of the Federal and States governments.

[2] Few things in English history are better worth studying, or have exercised a more pervading influence on the progress of events, than the practical disappearance from rural England of that Commune or Gemeinde which has remained so potent a factor in the economic and social as well as the political life of France and Italy, of Germany (including Austrian Germany) and of Switzerland. If Englishmen were half as active in the study of their own local institutions as Americans have begun to be in that of theirs, we should have had a copious literature upon this interesting subject.

or to officials appointed by the county or by the central government, until the legislation of the present century began to create new districts, especially poor law and sanitary districts, for local administration.[1] In the larger English area, the county, true self-government died out with the ancient Shire Moot, and fell into the hands of persons (the justices assembled in Quarter Sessions) nominated by the Crown, on the recommendation of the lord-lieutenant. It is only to-day that a system of elective county councils is being created by statute. In the American colonies the governor filled the place which the Crown held in England; but even in colonial days there was a tendency to substitute popular election for gubernatorial nomination; and county government, obeying the universal impulse, is now everywhere democratic in form; though in the South, while slavery and the plantation system lasted, it was practically aristocratic in its spirit and working.

III. In England the control of the central government—that is, of Parliament—is now maintained not only by statutes defining the duties and limiting the powers of the various local bodies, but also by the powers vested in sundry departments of the executive, the Local Government Board, Home Office, and Treasury, of disallowing certain acts of these bodies, and especially of supervising their expenditure and checking their borrowing. In American States the executive departments have no similar functions. The local authorities are

[1] However, the parish constables and way-wardens in some places continue to be elected by popular vote; and the manor courts and courts leet were semi-popular institutions. Even now the parish vestry has some civil powers.

In counties the coroner continued to be elected by the freeholders, but as these pages are passing through the press, a provision transferring the appointment to the newly-created county councils has been enacted by Parliament (51 & 52 Vict. ch. xli. § 5).

restrained partly by the State legislature, whose statutes of course bind them, but still more effectively, because legislatures are not always to be trusted, by the State Constitutions. These instruments usually—the more recent ones I think invariably — contain provisions limiting the amount which a county, township, village, school district, or other local area may borrow, and often also the amount of tax it may levy, by reference to the valuation of the property contained within its limits. Specimens of these provisions will be found in a note at the end of this volume. They have been found valuable in checking the growth of local indebtedness, which had become, even in rural districts, a serious danger.[1] The total local debt was in 1880 :—

Counties . .	$125,452,100	(£25,090,000)
Townships .	30,190,861	(£6,038,000)
School Districts .	17,493,110	(£3,498,000)
Total . .	$173,136,071	(£34,626,000)

This sum bears a comparatively small proportion to the total debt of the several States and of the cities, which was then—

States	$260,377,310	(£52,000,000)
Cities over 7500 inhabitants .	710,535,924	(£142,100,000)
Other municipal bodies under 7500 inhabitants . .	56,310,209	(£11,200,000)
Total .	$1,027,223,443	(£205,300,000)

It is also a diminishing amount, having fallen eight per

[1] See also Chapter XLIII. on "State Finance." These provisions are of course applied to cities also, which need them even more. They vary very much in their details, and in some cases a special popular vote is allowed to extend the limit.

cent between 1870 and 1880,[1] whereas city indebtedness was then still increasing.

IV. County and township or school district taxes are direct taxes, there being no *octroi* in America, and are collected along with State taxes in the smallest tax-gathering area, *i.e.* the township, where townships exist. Local rates are not, however, as in England, levied on immovable property only, but also on personal property, according to the valuation made by the assessors. Much the larger part of taxable personalty escapes because its owners conceal it, and there may be no means of ascertaining what they possess. Lands and houses are often assessed far below their true value, because the township assessors have an interest in diminishing the share of the county tax which will fall upon their township; and similarly the county assessors have an interest in diminishing the share of the State tax to be borne by their county.[2] Real property is taxed in the place where it is situate; personalty only in the place where the owner resides.[3] But the suffrage, in local as well as in State and National elections, is irrespective of property, and no citizen can vote in more than one place. A man may have a dozen houses or farms in as many cities, counties, or townships: he will vote, even for local purposes, only in the spot where he is held to reside.

The great bulk of local expenditure is borne by local taxes. But in some States a portion of the county taxes is allotted to the aid of school districts, so as to make the wealthier districts relieve the burden of the poorer,

[1] See article "Debts," by Mr. R. P. Porter in *American Cyclopædia of Political Science.*

[2] As to this and the Boards of Equalization see Chapter XLIII. *ante.*

[3] Of course what is really the same property may be taxed in more than one place, *e.g.* a mining company may be taxed as a company in Montana, and the shares held by individual proprietors be possibly also taxed in the several States in which these shareholders reside.

and often a similar subvention is made from State revenues. The public schools, which are everywhere and in all grades gratuitous, absorb a very large part of the whole revenue locally raised,[1] and in addition to what taxation provides they receive a large revenue from the lands which, under Federal or State legislation, have been set apart for educational purposes.[2] On the whole, the burden of taxation in rural districts is not heavy, nor is the expenditure often wasteful, because the inhabitants, especially under the Town meeting system, look closely after it.

V. It is noteworthy that the Americans, who are supposed to be especially fond of representative assemblies, have made very little use of representation in their local government. The township is governed either by a primary assembly of all citizens or else, as in such States as Ohio and Iowa, by a very small board, not exceeding three, with, in both sets of cases, several purely executive officers. In the county there is seldom or never a county board possessing legislative functions;[3] usually only three commissioners or supervisors with some few executive or judicial officers. Local legislation (except in so far as it appears in the petty bye-laws of the Town meeting) is discouraged. The people seem jealous of their county officials, electing

[1] The total expenditure on public schools in the United States is stated by the U.S. Commissioner of Education (*Report* for 1885-86) at $111,304,927 (£22,260,000). The National government has no authority over educational matters, but has, since 1867, had a Bureau which collects statistics from the States and issues valuable reports.

[2] The student of economic science may be interested to hear that in some of the States which have the largest permanent school fund the effect on the efficiency of the schools, and on the interest of the people in them, has been pernicious. In education, as well as in eleemosynary and ecclesiastical matters, endowments would seem to be a very doubtful benefit.

[3] In New York, however, there is said to be some tendency in this direction.

them for short terms, and restricting each to a special range of duties. This is perhaps only another way of saying that the county, even in the South, has continued to be an artificial entity, and has drawn to itself no great part of the interest and affections of the citizens. Over five-sixths of the Union each county presents a square figure on the map, with nothing distinctive about it, nothing "natural" about it, in the sense in which such English counties as Kent or Cornwall are natural entities. It is too large for the personal interest of the citizens: that goes to the township. It is too small to have traditions which command the respect or touch the affections of its inhabitants: these belong to the State.[1]

VI. The chief functions local government has to discharge in the United States are the following:—

Making and repairing roads and bridges.—These prime necessities of rural life are provided for by the township, county, or State, according to the class to which a road or bridge belongs. That the roads of America are proverbially ill-built and ill-kept is due partly to the climate, with its alternations of severe frost, occasional torrential rains (in the middle and southern States), and long droughts; partly to the hasty habits of the people, who are too busy with other things, and too eager to use their capital in private enterprises to be willing to spend freely on highways; partly also to the thinness of population, which is, except in a few manufacturing districts, much less dense than in western Europe. In many districts railways have come before roads, so roads have been the less used and cared for.

The administration of justice was one of the first needs which caused the formation of the county: and

[1] In Virginia there used to be in old days a sort of county feeling resembling that of England, but this has vanished in the social revolution that has transformed the South.

matters connected with it still form a large part of county business. The voters elect a judge or judges, and the local prosecuting officer, called the district attorney, and the chief executive officer, the sheriff.[1] Prisons are a matter of county concern. Police is always locally regulated, but in the northern States more usually by the township than by the county. However, this branch of government, so momentous in continental Europe, is in America comparatively unimportant outside the cities. The rural districts get on nearly everywhere with no guardians of the peace, beyond the township constable;[2] nor does the State government, except, of course, through statutes, exercise any control over local police administration.[3] In the rural parts of the eastern and middle States property is as safe as anywhere in the world. In such parts of the West as are disturbed by dacoits, or by solitary highwaymen, travellers defend themselves, and, if the sheriff is distant or slack, lynch law may usefully be invoked. The care of the poor is thrown almost everywhere upon local and not upon State authorities,[4] and defrayed out of local funds, sometimes by the county, sometimes by the township. The poor laws of the several States differ in so many particulars that it is impossible to give even an outline of them here. Little out-door relief is given, though in most States the relieving authority may, at

[1] The American sheriff remains something like what the English sheriff was before his wings were clipped by legislation some seventy years ago. Even then he mostly acted by deputy. The justices and the county police have since that legislation largely superseded his action.

[2] Or, in States where there are no townships, some corresponding officer.

[3] Michigan is now (1888) said to be instituting a sort of State police for the enforcement of her anti-liquor legislation.

[4] In some States there are State poor-law superintendents, and frequently certain State institutions for the benefit of particular classes of paupers, *e.g.* pauper lunatics.

his or their discretion, bestow it; and pauperism is not, and has never been, a serious malady, except in some five or six great cities, where it is now vigorously combated by volunteer organizations largely composed of ladies. The total number of persons returned as paupers in the whole Union in 1880 was 88,665, of whom 67,067 were inmates of alms-houses, and 21,598 in receipt of out-door relief. This was only 1 to 565 of the whole population.[1] In England and Wales in 1881 there were 803,126 paupers, to a population of 25,974,439, or 1 to 32 of population.

Sanitation, which has become so important a department of English local administration, plays a small part in the rural districts of America, because their population is so much more thinly spread over the surface that the need for drainage and the removal of nuisances is less pressing; moreover, as the humbler classes are better off, unhealthy dwellings are far less common. Public health officers and sanitary inspectors would, over the larger part of the county, have little occupation.[2]

Education, on the other hand, has hitherto been not only a more distinctively local matter, but one relatively far more important than in England, France, or Italy. And there is usually a special administrative body, often a special administrative area, created for its purposes—the school committee and the school district.[3] The vast

[1] New York had 15,217 paupers (of whom 2810 were out-door), Colorado 47 (1 out-door), Arizona 4. Louisiana makes no return of in-door paupers, because the parishes (= counties) provide for the maintenance of their poor in private institutions.

[2] Sanitation, however, has occupied much attention in the cities. Cleveland on Lake Erie claims to have the lowest death rate of any large city in the world.

[3] Though the school district frequently coincides with the township, it has generally (outside of New England) administrative officers distinct from those of the township, and when it coincides it is often subdivided into lesser districts.

sum expended on public instruction has been already mentioned. Though primarily dealt with by the smallest local circumscription, there is a growing tendency for both the county and the State to interest themselves in the work of instruction by way of inspection, and to some extent of pecuniary subventions. Not only does the county often appoint a county superintendent, but there are in some States county high schools and (in most) county boards of education, besides a State Board of Commissioners.[1] I need hardly add that the schools of all grades are more numerous and efficient in the northern and western than in the southern States.[2] In old colonial days, when the English Commissioners for Foreign Plantations asked for information on the subject of education from the governors of Virginia and Connecticut, the former replied, "I thank God there are no free schools or printing presses, and I hope we shall not have any these hundred years;"[3] and the latter, "One-fourth of the annual revenue of the colony is laid out in maintaining free schools for the education of our children." The disparity was prolonged and intensified in the South by the existence of slavery. Now that slavery has gone, the South makes rapid advances; but the proportion of illiteracy, especially of course among the negroes, is still high.[4]

[1] In some States provision is made for the combination of several school districts to maintain a superior school at a central spot.

[2] The differences between the school arrangements of different States are so numerous that I cannot attempt to describe them.

[3] Governor Sir William Berkeley, however, was among the Virginians who in 1660 subscribed for the erection in Virginia of a "a colledge of students of the liberal arts and sciences." As to elementary instruction he said that Virginia pursued "the same course that is taken in England out of towns, every man according to his ability instructing his children. We have forty-eight parishes, and our ministry are well paid, and, by consent, should be better if they would pray oftener and preach less."—*The College of William and Mary*, by Dr. H. B. Adams.

[4] The percentage of persons unable to read to the whole population

It will be observed that of the general functions of local government above described, three, viz. police, sanitation, and poor relief, are simpler and less costly than in England, and indeed in most parts of western and central Europe. It has therefore proved easier to vest the management of all in the same local authority, and to get on with a smaller number of special executive officers. Education is indeed almost the only matter which has been deemed to demand a special body to handle it. Nevertheless, even in America the increasing complexity of civilization, and the growing tendency to invoke governmental aid for the satisfaction of wants which were not previously felt, or if felt, were met by voluntary action, tend to enlarge the sphere and multiply the functions of local government.

VII. How far has the spirit of political party permeated rural local government? I have myself asked this question a hundred times in travelling through America, yet I find it hard to give any general answer, because there are great diversities in this regard not only between different States, but between different parts of the same State, diversities due sometimes to the character of the population, sometimes to the varying intensity of party feeling, sometimes to the greater or less degree in which the areas of local government coincide with the election districts for the election of State senators or representatives. On the whole

of the United States was, in 1880, 13·4; it was lowest in Iowa (2·4), highest in South Carolina (48·2) and Louisiana (45·8). The percentage of persons unable to write was in the whole United States, 17; lowest in Nebraska (3·6), highest in South Carolina (55·4) and Alabama (50·9).

It has recently been proposed in Congress to reduce the surplus in the U.S. treasury by distributing sums among the States in aid of education, in proportion to the need which exists for schools, *i.e.* to their illiteracy. The objections on the score of economic policy, as well as of constitutional law, are so obvious as to have stimulated a warm resistance to the bill.

it would seem that county officials are apt to be chosen on political lines, not so much because any political questions come before them, or because they can exert much influence on State or Federal elections, as because these paid offices afford a means of rewarding political services and securing political adhesions. Each of the great parties usually holds its county convention and runs its "county ticket," with the unfortunate result of intruding national politics into matters with which they have nothing to do, and of making it more difficult for good citizens outside the class of professional politicians to find their way into county administration. However, the party candidates are seldom bad men, and the ordinary voter is less apt to vote blindly for the party nominee than he would be in Federal or State elections. In the township and rural school district party spirit is much less active. The offices are often unpaid, and the personal merits of the candidates are better known to the voters than are those of the politicians who seek for county office.[1] Rings and Bosses (of whom more anon) are not unknown even in rural New England. School committee elections are often influenced by party affiliations. But on the whole, the township and its government keep themselves pretty generally out of the political whirlpool: their posts are filled by honest and reasonably competent men.

VIII. The apparent complexity of the system of local government sketched in the last preceding chapter is due entirely to the variations between the several States. In each State it is, as compared with that of rural England, eminently simple. There are few local divisions, few authorities; the divisions and authorities rarely overlap.

[1] Sometimes the party "ticket" leaves a blank space for the voter to insert the name of the candidates for whom he votes for township offices. See the specimen Iowa ticket at the end of Chapter LXVI.

No third local area and local authority intermediate between township and county, and similar to the English poor law Union, or District with its Council recently proposed in England, has been found necessary. Especially simple is the method of levying taxes. A citizen pays at the same time, to the same officer, upon the same paper of demand, all his local taxes, and not only these, but also his State tax; in fact, all the direct taxes which he is required to pay. The State is spared the expense of maintaining a separate collecting staff, for it leans upon and uses the local officials who do the purely local work. The tax-payer has not the worry of repeated calls upon his cheque-book.[1] Nor is this simplicity and activity of local administration due to its undertaking fewer duties, as compared with the State, than is the case in Europe. On the contrary, the sphere of local government is in America unusually wide,[2] and widest in what may be called the most characteristically American and democratic regions, New England and the North-west. Americans constantly reply to the criticisms which Europeans pass on the faults of their State legislatures and the shortcomings of Congress by pointing to the healthy efficiency of their rural administration, which enables them to bear with composure the defects of the higher organs of government, defects which would be less tolerable in a centralized country, where the national government deals directly with local affairs, or where local authorities await an initiative from above.

[1] Some States, however, give a man the option of paying half-yearly or quarterly. In many a discount is allowed upon payment in advance.

[2] The functions are not perhaps so numerous as in England, but this is because fewer functions are needed. The practical competence of local authorities for undertaking any new functions that may become needed, and which the State may entrust to them, is great.

Of the three or four types or systems of local government which I have described, that of the Town or township with its popular primary assembly is admittedly the best. It is the cheapest and the most efficient; it is the most educative to the citizens who bear a part in it. The Town meeting has been not only the source but the school of democracy.[1] The action of so small a unit needs, however, to be supplemented, perhaps also in some points supervised, by that of the county, and in this respect the mixed system of the middle States is deemed to have borne its part in the creation of a perfect type. For some time past an assimilative process has been going on over the United States tending to the evolution of such a type.[2] In adopting the township system of New England, the north-western States have borrowed some of the attributes of the middle States county system. The middle States have developed the township into a higher vitality than it formerly possessed there. Some of the southern States are introducing the township, and others are likely to follow as they advance in population and education. It is possible that by the middle of next century there will prevail one system, uniform in its outlines, over the whole country, with the township for its basis, and the county as the organ called to deal with those matters which, while they are too large for township management, it seems inexpedient to remit to the unhealthy atmosphere of a State capital.

[1] In Rhode Island it was the Towns that made the State.

[2] This tendency is visible not least as regards the systems of educational administration. The National Teachers' Association of the U.S. not long since prepared an elaborate report on the various existing systems, and the more progressive States are on the alert to profit by one another's experience.

CHAPTER L

THE GOVERNMENT OF CITIES

THE growth of great cities has been among the most significant and least fortunate changes in the character of the population of the United States during the century that has passed since 1787. The census of 1790 showed only thirteen cities with more than 5000, and none with more than 40,000 inhabitants. In 1880 there were 494 exceeding 5000, forty exceeding 40,000, twenty exceeding 100,000. There are probably to-day (1888) at least thirty exceeding 100,000. The ratio of persons living in cities exceeding 8000 inhabitants to the total population was, in 1790, 3·3 to every 100, in 1840, 8·5, in 1880, 22·5. And this change has gone on with accelerated speed notwithstanding the enormous extension of settlement over the vast regions of the West. Needless to say that a still larger and increasing proportion of the wealth of the country is gathered into the larger cities. Their government is therefore a matter of high concern to America, and one which cannot be omitted from a discussion of transatlantic politics. Such a discussion is, however, exposed to two difficulties. One is that the actual working of municipal government in the United States is so inextricably involved with the party system that it is hard to understand or judge it

without a comprehension of that system, an account of which I am, nevertheless, forced to reserve for subsequent chapters. The other is that the laws which regulate municipal government are even more diverse from one another than those whence I have drawn the account already given of State governments and rural local government. For not only has each State its own system of laws for the government of cities, but within a State there is, as regards the cities, little uniformity in municipal arrangements. Larger cities are often governed differently from the smaller ones; and one large city is differently organized from another. So far as the legal arrangements go, no general description, such as might be given of English municipal governments under the Municipal Corporation Acts, is possible in America. I am therefore obliged to confine myself to a few features common to most city governments, occasionally taking illustrations from the constitution or history of some one or other of the leading municipalities.

The history of American cities, though striking and instructive, has been short. Of the ten greatest cities of to-day only four—Baltimore, New Orleans, New York, and Philadelphia—were municipal corporations in 1820.[1] Every city has received its form of government from the State in which it stands, and this form has been repeatedly modified. Formerly each city obtained a special charter; now in nearly all States there are general laws under which a population of a certain size and density may be incorporated. Yet, as observed above, special legislation for particular cities, especially the greater ones, continues to be very frequent.

[1] The term "city" denotes in America what is called in England a municipal borough, and has nothing to do with either size or antiquity. The constitution or frame of government of a city, which is always given by a State statute, general or special, is called its charter.

Although American city governments have a general resemblance to those English municipalities which were their first model,[1] their present structure shows them to have been much influenced by that of the State governments. We find in all the larger cities—

A mayor, head of the executive, and elected directly by the voters within the city.

Certain executive officers or boards, some directly elected by the city voters, others nominated by the mayor or chosen by the city legislature.

A legislature, consisting usually of two, but sometimes of one chamber, directly elected by the city voters.

Judges, usually elected by the city voters, but sometimes appointed by the State.

What is this but the frame of a State government applied to the smaller area of a city? The mayor corresponds to the Governor, the officers or boards to the various State officials and boards (described in Chapter XLI.) elected, in most cases, by the people; the aldermen and common council (as they are generally called) to the State Senate and Assembly; the city elective judiciary to the State elective judiciary.[2]

A few words on each of these municipal authorities. The mayor is by far the most conspicuous figure in city governments, much more important than the mayor of an English or Irish borough, or the provost of a Scotch one. He holds office, sometimes for one year,[3] but now

[1] American municipalities have, of course, never been, since the Revolution, close corporations like most English boroughs before the Act of 1835.

[2] American municipal governments are of course subject to three general rules: that they have no powers other than those conferred on them by the State, that they cannot delegate their powers, and that their legislation and action generally is subject to the constitution and statutes as well of the United States as of the State to which they belong.

[3] Generally in the cities of the second rank and in Boston.

more frequently for two,[1] three, or even five[2] years. In some cities he is not re-eligible. He is directly elected by the people of the whole city, and is usually not a member of the city legislature.[3] He has, almost everywhere, a veto on all ordinances passed by that legislature, which, however, can be overriden by a two-thirds majority. In many cities he appoints some among the heads of departments and administrative boards, though usually the approval of the legislature or of one branch of it[4] is required. Quite recently some city charters have gone so far as to make him generally responsible for all the departments, though limiting his initiative by the right of the legislature to give or withhold supplies, and making him liable to impeachment for misfeasance. He receives a considerable salary, varying with the size of the city, but sometimes reaching $10,000, the same salary as that allotted to the justices of the Supreme Federal Court. It rests with him, as the chief executive officer, to provide for the public peace, to quell riots, and, if necessary, to call out the militia.[5] He often exerts a pretty wide discretion as to the en-

[1] New York, Brooklyn, Chicago, Baltimore, San Francisco, Cincinnati, and generally in the larger cities. [2] Philadelphia, St. Louis.

[3] In Chicago and San Francisco the mayor sits in the legislature.

[4] The Brooklyn charter allows the mayor to appoint heads of departments without any concurrence of the council, in the belief that thus responsibility can be better fixed upon him; and New York has lately (1884) taken the same course.

[5] Some idea of the complexity due to the practice of giving special charters to particular cities, or passing special bills relating to them, may be gathered from the fact that in Ohio, for instance, the duties of the mayor vary greatly in the six chief cities of the State. There are duties which a mayor has in Cincinnati only, out of all the cities of the State; others which he has in all the cities except Cincinnati; others in Cincinnati and Toledo only; others in Cleveland, Toledo, Columbus, Dayton, and Springfield only; others in Cleveland and Toledo only; others in Cleveland only; others in Toledo only; others in Columbus and Dayton only. These variations are the result not of ordinances made by each city for itself, but of State legislation.

forcement of the law; he may, for instance, put in force Sunday Closing Acts or regulations, or omit to do so.

The practical work of administration is carried on by a number of departments, sometimes under one head, sometimes constituted as boards or commissions. The most important of these are directly elected by the people, for a term of one, two, three, or four years. Some, however, are chosen by the city legislature, some by the mayor with the approval of the legislature or its upper chamber. In most cities the chief executive officers have been disconnected from one another, owing no common allegiance, except that which their financial dependence on the city legislature involves, and communicating less with the city legislature as a whole than with its committees, each charged with some one branch of administration, and each apt to job it.

Education has been generally treated as a distinct matter, with which neither the mayor nor the legislature has been suffered to meddle. It is committed to a Board of Education, whose members are separately elected by the people, or, as in Brooklyn, appointed by the mayor, levy (though they do not themselves collect) a separate tax, and have an executive staff of their own at their disposal.[1]

The city legislature usually consists in small cities of one chamber, in large ones of two, the upper of which generally bears the name of the Board of Aldermen, the lower that of the Common Council.[2] All are elected by

[1] There are some points of resemblance in this system to the government of English cities, and especially of London. The English common councils elect certain officials and manage their business by committees. In London the sheriffs and chamberlain are elected by the liverymen. Note, however, that in no English borough or city do we find a two-chambered legislature, nor (except as last aforesaid in London) officials elected by popular vote, nor a veto on legislation vested in the mayor.

[2] Some large cities, however (*e.g.* New York and Brooklyn, Chicago with its 36 aldermen, San Francisco with its 12 supervisors), have only one chamber.

the citizens, generally in wards, but the upper house occasionally by districts or on what is called a "general ticket," *i.e.* a vote over the whole city.[1] Usually the common council is elected for one year, or at most for two years, the upper chamber frequently for a longer period.[2] Both are usually unpaid in the smaller cities, sometimes paid in the larger.[3] All city legislation, that is to say, ordinances, bye-laws, and votes of money from the city treasury, are passed by the council or councils, subject in many cases to the mayor's veto. Except in a few cities governed by very recent charters, the councils have some control over at least the minor officials. Such control is exercised by committees, a method borrowed from the State and National legislatures, and suggested by the same reasons of convenience which have established it there, but proved by experience to have the evils of secrecy and irresponsibility as well as that of disconnecting the departments from one another.

The city judges are only in so far a part of the municipal government that in most of the larger cities they are elected by the citizens, like the other chief officers. There are usually several superior judges, chosen for terms of five years and upwards, and a larger number of police judges or justices,[4] generally for shorter terms. Occasionally, however, the State has prudently

[1] In some few cities, among which is Chicago, the plan of minority representation has been to some extent adopted by allowing the voter to cast his vote for two candidates only when there are three places to be filled. It was tried in New York, but the State Court of Appeals held the statute creating it to be unconstitutional.

[2] Sometimes the councilman is required by statute to be a resident in the ward he represents.

[3] Boston and Cincinnati give no salary, St. Louis pays members of both its councils $300 (£60) a year, Baltimore, $1000 (£200), New York pays and Brooklyn does not.

[4] Sometimes (as in St. Louis) the police justices are nominated by the mayor.

reserved to itself the appointment of judges. Thus in New Haven, Connecticut (population in 1880, 62,882)—

"Constables, justices of the peace, and a sheriff, are elected by the citizens, but the city courts derive existence directly from the State legislature. . . . The mode of selecting judges is this: the New Haven county delegation to the dominant party in the legislature assembles in caucus and nominates two of the same political faith to be respectively judge and assistant judge of the New Haven city court. Their choice is adopted by their party, and the nominations are duly ratified, often by a strict party vote. Inasmuch as the legislature is usually Republican, and the city of New Haven is unfailingly Democratic, these usages amount to a reservation of judicial offices from the 'hungry and thirsty' local majority, and the maintenance of a certain control by the Republican country towns over the Democratic city." [1]

It need hardly be said that all the above officers, from the mayor and judges downwards, are, like State officers, elected by manhood suffrage. Their election is usually made to coincide with that of State officers, perhaps also of Federal congressmen. This saves expense and trouble. But as it not only bewilders the voter in his choice of men by distracting his attention between a large number

[1] "During the session of the legislature in March 1885 this argument was put forward in answer to a Democratic plea for representation upon the city court bench. 'The Democrats possess all the other offices in New Haven. It's only fair that the Republicans should have the city court.' Each party accepted the statement as a conclusive reason for political action. It would be gratifying to find the subject discussed upon a higher plane, and the incumbents of the offices who had done well continued from term to term without regard to party applications. But in the present condition of political morals, the existing arrangements are probably the most practicable that could be made. It goes without saying that country districts are, as a rule, more deserving of political power than are cities. The method of selecting the judiciary is everywhere a moral question, but it seems to me that the State authority should designate every judge of a rank higher than a justice of the peace. If the city judges were locally elected upon the general party ticket, the successful candidates would often be under obligations to elements in the community which are the chief source and nurse of the criminal class—an unseemly position for a judge."—Mr. Charles H. Levermore in his interesting sketch of the "Town and City Government of New Haven" (p. 77).

of candidates and places, but also confirms the tendency, already strong, to vote for city officers on party lines, there has of late years been a movement in some few spots to have the municipal elections fixed for a different date from that of State or Federal elections, so that the undistracted and non-partisan thought of the citizens may be given to the former.[1]

At present the disposition to run and vote for candidates according to party is practically universal, although the duty of party loyalty is deemed less binding than in State or Federal elections. When both the great parties put forward questionable men, a non-partisan list, or so-called "citizens' ticket," may be run by a combination of respectable men of both parties. Sometimes this attempt succeeds. However, though the tenets of Republicans and Democrats have absolutely nothing to do with the conduct of city affairs, though the sole object of the election, say of a city comptroller or auditor, may be to find an honest man of good business habits, four-fifths of the electors in nearly all cities give little thought to the personal qualifications of the candidates, and vote the "straight out ticket."

The functions of city governments may be distributed into three groups—(*a*) those which are delegated by the State out of its general coercive and administrative powers, including the police power, the granting of licences, the execution of laws relating to adulteration and explosives; (*b*) those which though done under general laws are properly matters of local charge and subject to local regulation, such as education and the care of the poor; and (*c*) those which are not so much of a

[1] On the other hand, there are cities which hope to draw out a larger vote, and therefore obtain a better choice, by putting their municipal elections at the same time as the State elections. This has just been done by Minneapolis.

political as of a purely business order, such as the paving and cleansing of streets, the maintenance of proper drains, the provision of water and light. In respect of the first, and to some extent of the second of these groups, the city may be properly deemed a political entity; in respect of the third it is rather to be compared to a business corporation or company, in which the taxpayers are shareholders, doing, through the agency of the city officers, things which each might do for himself, though with more cost and trouble. All three sets of functions are dealt with by American legislation in the same way, and are alike given to officials and a legislature elected by persons of whom a large part pay no direct taxes. Education, however, is usually detached from the general city government and entrusted to a separate authority,[1] while in some cities the control of the police has been withheld or withdrawn from that government, and entrusted to the hands of a separate board.[2] The most remarkable instance is that of Boston, in which city a Massachusetts statute of 1885 entrusts the police department and the power to license, regulate, and restrain the sale of intoxicating liquors, to a special board of three persons, to be appointed for five years by the State governor and council. Both political parties are directed by the statute to be represented on the board. (This is a frequent provision in recent charters.) The city pays on the board's requisition all the expenses of the police department. In New York the police commissioners are appointed by the mayor, but in order to "take the department out of politics" an

[1] Though sometimes, as in Baltimore, the city legislature appoints a Board of Education. Unhappily, in some cities education is "within politics," and, as may be supposed, with results unfavourable to the independence and even to the quality of the teachers.

[2] So in Baltimore.

unwritten understanding has been established that he, though himself always a partisan, shall appoint two Democratic and two Republican commissioners. The post of policeman is "spoils" of the humbler order, but spoils equally divided between the parties.

Taxes in cities, as in rural districts, are levied upon personal as well as real property; and the city tax is collected along with the county tax and State tax by the same collectors. There are, of course, endless varieties in the practice of different States and cities as to methods of assessment and to the minor imposts subsidiary to the property tax. Both real and personal property are usually assessed far below their true value,[1] the latter because owners are reticent, the former because the city assessors are anxious to take as little as possible of the State and county burden on the shoulders of their own community, though in this patriotic effort they are checked by the county and State Boards of Equalization. Taxes are usually so much higher in the larger cities than in the country districts or smaller municipalities, that there is a strong tendency for rich men to migrate from the city to its suburbs in order to escape the city collector. Perhaps the city overtakes them, extending its limits and incorporating its suburbs; perhaps they fly farther afield by the railway and make the prosperity of country towns twenty or thirty miles away. The unfortunate consequence follows, not only that the taxes are heavier for those who remain in the city, but that the philanthropic and political work of the city loses the participation of those who ought to have shared in it. For a man votes in one place only, the place where

[1] In New York the assessor's valuation of real estate is said to be about 60 per cent of its true value, in Chicago between 20 and 30 per cent of that value (*City Government of Philadelphia*, p. 323).

he resides, and is taxed on his personalty, although he is taxed on his real property wherever it is situate, perhaps in half a dozen cities or counties. And where he has no vote, he is neither eligible for local office nor deemed entitled to take a part in local political agitation.

It may conduce to a better comprehension of the newest frame of city government if I present an outline of the municipal system in two recently reformed cities. In both of them there had been serious maladministration, due to causes to be presently explained, and many efforts had been made to apply drastic remedies. In one, St. Louis, a completely new charter has been enacted, embodying, in the main, the views of municipal reformers. In the other, Boston, a number of specific improvements have been effected in a charter dating from 1854. I begin with the latter as the older city.[1]

Boston (population in 1880, 362,839) is divided into twenty-four wards and twelve aldermanic districts, each ward being subdivided into voting precincts, with about five hundred voters in each. Municipal elections are held annually early in December.

The mayor is elected for one year by the people of the whole city; receives $10,000 a year (£2000); appoints, subject to confirmation by the board of aldermen, the chief officers and boards (except the police board and street commissioners), and may remove any of them for cause. He summons the heads of departments at least once a month for consultation. Every ordinance, order, resolution, or vote of the city council, and every act of either branch or of the school committee involving the expenditure of money, is presented to him for approval, and if disapproved, falls to the ground, unless reconsidered and passed by a two-thirds vote. He

[1] This account of Boston government is abstracted from a valuable paper by Mr. James M. Bugbee, entitled the "City Government of Boston," in *Johns Hopkins University Studies*, fifth series (Baltimore, 1887). It contains some interesting extracts from the Report of the Boston Commission of 1884, suggesting reforms, some of which were adopted by the State legislature.

may veto separate items in a general appropriation bill. The departments send their estimates to him, which he submits to the council with his recommendations thereon. All drafts on the city treasury, and all contracts exceeding $1000 (£200), require his written approval.[1] [Note that he is not himself a member of either branch of the city legislature.]

The legislature, called collectively the City Council, consists of two branches, viz. the Board of Aldermen, elected one from each of twelve districts, and the Common Council of seventy-two members, three for each ward. Both are elected annually. They are restricted to purely legislative (including financial) functions.

The executive departments are the following:—

Elected by popular vote.—Three street commissioners, one each year for a three years term, with power to lay out streets and assess damages. When the estimated cost of a street exceeds $10,000 the concurrence of the council is required.

Appointed by mayor and aldermen.—Superintendent of streets, charged with paving, repairing, and watering the streets.

Fire department—three commissioners serving three years.

Head of department for the survey and inspection of buildings. Term three years.

Health department—three commissioners, with large sanitation powers for preserving public health and abating nuisances. Term three years.

Overseers of the poor—four each year. Term three years.[2] They manage out-door relief and the trust funds which the city holds for that purpose. No salary.

Board of public institutions—nine directors, charged with the care of the alms-houses, houses of correction, of industry, of reformation, house for pauper children, and lunatic hospital. Term three years. No salary. It is in these institutions that in-door relief is given.

City hospital board—five persons. Term five years.

[1] The mayor has a number of minor duties. "It appears from the latest edition of the Ordinances that no one can climb a tree, or throw stones, or lie on the grass on the Common, without getting a permit from the mayor."

[2] Formerly the people, subsequently the council, elected the overseers. As under both plans men sometimes got in who jobbed for their own benefit, the present scheme was adopted in 1885.

Public library, supported by money voted by the council, five trustees. Term five years. No salary.

Park department—three commissioners. Term three years. No salary.[1]

Water department—board of three which controls the water-works and fixes price of water. Term three years.

Assessors' department—five chief assessors, to value real and personal property, and assess city, county, and State taxes. Term three years.

City collector, who levies tax bills delivered to him by the assessors. Appointed annually.

The following further officers are appointed by the mayor and aldermen. For five years—five commissioners of Cedar Grove Cemetery (unpaid); for three years—three registrars of voters, six sinking fund commissioners (unpaid); for one year—two record commissioners (unpaid), five directors of ferries (unpaid), five trustees of Mount Hope Cemetery (unpaid), city treasurer, city auditor, corporation counsel, city solicitor, superintendent of public buildings, city architect, superintendent of street lights, superintendent of sewers, superintendent of printing, superintendent of Faneuil Hall Market, superintendent of bridges, city surveyor, water registrar, registrar of births, deaths, and marriages, harbour master and ten assistants, commission for certain bridges, inspector of provisions, inspector of milk and vinegar, sealer (and four deputy sealers) of weights and measures, nine hundred and sixty-eight election officers and their deputies.

The above (so far as paid) are paid by salary fixed by the council. The following officers, also appointed annually by mayor and aldermen, are paid by fees:—

Inspector of lime, three inspectors of petroleum, fifteen inspectors of pressed hay, culler of hoops and staves, three fence viewers, ten field drivers and pound keepers, three surveyors of marble, nine superintendents of hay scales, four measurers of upper leather, fifteen measurers of wood and bark, twenty measurers of grain, three weighers of beef, thirty-eight weighers of coal, five weighers of boilers and heavy machinery, four weighers of ballast and lighters, ninety-two undertakers, one hundred and fifty constables.

[1] This board supervises the suburban parks, the Common, and the Public Garden (together with smaller open spaces), within the city, being under the charge of a superintendent separately appointed.

In addition to these there is a city clerk, city messenger, and clerk of committees elected by concurrent vote of the City Council, a clerk of the common council elected by that body, and many county officers elected by the voters of the county of Suffolk, in which Boston stands, and of which Boston furnishes nearly the whole population. The county judges, however, are not elected, but, like all other judges in Massachusetts, are appointed by the Governor and Council to hold office *quam diu se bene gesserint.* Exclusive of election officers and fee-paid officers, the mayor and aldermen appoint 107 persons, of whom 65 are appointed for one year, 61 receive salaries, and 41 serve gratuitously. In the present city administration there are forty separate departments and offices, most of them with a large number of subordinates and workmen. This "multiplicity of departments and departments not only involves the city in expenses not to be measured merely by the salaries paid to superfluous officials,"[1] but affords a large field for the exercise of party patronage, a patronage partially limited, but as regards subordinates only, by the Massachusetts Civil Service Act of 1884, which is administered by a Civil Service Commission.

Distinct from the rest of the city government is the School Committee of twenty-four members, elected on a general ticket over the whole city, and serving for three years, eight retiring annually.

Also distinct is the Police Department, which, as already observed, has by a statute of 1885 been entrusted to a Board of Police, appointed by the Governor and Council, of three citizens of Boston, with power to "appoint, establish, and organize" the police, and to license, regulate, and restrain the sale of intoxicating liquors.[2] In case of riot, the mayor can take command of the police force.

The city of St. Louis (population in 1880, 350,518) is governed by a charter or scheme of government which, in pursuance of a special provision for that purpose in the new Constitution of Missouri (1875), was prepared by a board of thirteen freeholders elected by

[1] Report of the Commission of 1884.

[2] In the cities and towns of Massachusetts the question of granting licences for the sale of intoxicants is annually submitted to popular vote. See note to Chapter LXVI. At present in Boston and most cities the grant has been voted. The annual revenue derived from licences is in Boston over $500,000 (£100,000) per annum.

the people of the city and county of St. Louis, and was finally adopted and ratified by the people themselves by a vote at the polls, August 22, 1876.[1]

St. Louis is divided into 28 wards and 244 voting precincts. Elections are governed by a strict law, which generally prevents frauds, and are quiet, all drinking saloons being closed till midnight.

The mayor is elected by the people for four years, receives $5000 (£1000) salary, is not a member of the city Assembly, with which he communicates by messages. He has the power of returning any bill passed by the Assembly, subject to a power in them to reconsider and pass by a two-thirds vote. He recommends measures to the Assembly, submits reports from the heads of departments, and has a great variety of minor executive duties. He appoints to a large number of important offices, but in conjunction with the Council (upper house of the Assembly). For the sake of protecting him from the pressure of those to whom he owes his election, these appointments are made by him at the beginning of the third year of his own term, and for a term of four years.

The Assembly is composed of two houses. The Council consists of thirteen members, elected for four years by "general ticket": one-third go out of office every second year. The House of Delegates consists of twenty-eight members, one from each ward. Each Assembly man receives $300 a year, besides his reasonable expenses incurred in the city service. The Assembly has a general legislative power and supervision over all departments, its borrowing and taxing powers being, however, limited.

The administrative departments are the following, viz.:—Thirteen officers elected by the people, viz. comptroller, treasurer, auditor, registrar, collector, marshal, inspector of weights and measures, president of board of assessors, coroner, sheriff, recorder of deeds, public administrator, president of board of public improvements.

Twenty Boards or officers are appointed, most of them for four years, by the mayor with the approval of the Council, viz.—Board of public improvements, consisting of street commissioner, water do., harbour do., park do., sewer do., assessor and collector of water

[1] I abridge the following account from a valuable paper by Mr. Marshall S. Snow (professor of history in Washington University, St. Louis), on the "City Government of St. Louis," in *Johns Hopkins University Studies*, third series.

rates, commissioner of public buildings, commissioner of supplies, commissioner of health, inspector of boilers, city counsellor, jury commissioner, recorder of votes, city attorney, two police court judges, jailer, superintendent of workhouse, chief fire engineer, gas inspector, assessors, and several city contractors and minor officers.

The four police commissioners who, along with the mayor, are charged with the public safety of St. Louis, are appointed by the Governor of Missouri, with the view of keeping this department "out of city politics." In 1886 the police force was 593 men strong, besides 200 private watchmen, paid by their employers, but wearing a uniform and sworn in by the police board.

The city School Board consists of 28 members, one from each ward, elected for three years, one-third retiring annually. It is independent of the mayor and Assembly, chooses its staff and all teachers, has charge of the large school funds, and levies a school tax, which, however, the city collector collects.

The strong points of this charter are deemed to be "the length of term of its municipal officers; the careful provisions for honest registration and the party purity of elections; the checks on financial administration and limitations of the debt, and the fact that the important offices to which the mayor appoints are not vacant till the beginning of his third year of office, so that as rewards of political work done during a heated campaign they are too far in the distance to prejudice seriously the merits of an election."[1]

On the whole the charter has worked well. Nevertheless the European reader will feel some surprise at the number of elective offices and at the limited terms for which all important offices are held. He will note that even in democratic America the control of the police by city politicians has been deemed too dangerous to be suffered to remain in their hands. And he will contrast what may be called the political character of the whole city constitution with the somewhat simpler and less ambitious, though also less democratic arrangements, which have been found sufficient for the management of European cities.

[1] Snow, *ut supra.*

CHAPTER LI

THE WORKING OF CITY GOVERNMENTS

Two tests of practical efficiency may be applied to the government of a city: What does it provide for the people, and what does it cost the people? Space fails me to apply in detail the former of these tests, by showing what each city does or omits to do for its inhabitants; so I must be content with observing that in the United States generally constant complaints are directed against the bad paving and cleansing of the streets, the non-enforcement of the laws forbidding gambling and illicit drinking, and in some places against the sanitary arrangements and management of public buildings and parks. It would appear that in the greatest cities there is far more dissatisfaction than exists with the municipal administration in such cities as Glasgow, Liverpool, Manchester, Leeds, Dublin.

The following indictment of the government of Philadelphia is, however, exceptional in its severity, and however well founded as to that city, must not be taken to be typical. A memorial presented to the Pennsylvania legislature in 1883 by a number of the leading citizens of the Quaker City contained these words:—

"The affairs of the city of Philadelphia have fallen into a most deplorable condition. The amounts required annually for the pay-

ment of interest upon the funded debt and current expenses render it necessary to impose a rate of taxation which is as heavy as can be borne.

"In the meantime the streets of the city have been allowed to fall into such a state as to be a reproach and a disgrace. Philadelphia is now recognized as the worst-paved and worst-cleaned city in the civilized world.

"The water supply is so bad that during many weeks of the last winter it was not only distasteful and unwholesome for drinking, but offensive for bathing purposes.

"The effort to clean the streets was abandoned for months, and no attempt was made to that end until some public-spirited citizens, at their own expense, cleaned a number of the principal thoroughfares.

"The system of sewerage and the physical condition of the sewers is notoriously bad—so much so as to be dangerous to the health and most offensive to the comfort of our people.

"Public work has been done so badly that structures have had to be renewed almost as soon as finished. Others have been in part constructed at enormous expense, and then permitted to fall to decay without completion.

"Inefficiency, waste, badly-paved and filthy streets, unwholesome and offensive water, and slovenly and costly management, have been the rule for years past throughout the city government." [1]

In most of the points comprised in the above statement, Philadelphia was probably at that date—for her government has since been reformed—among the least fortunate of American cities. He, however, who should interrogate one of the "good citizens" of Baltimore, Cincinnati, New Orleans, New York, Chicago, San Francisco, would have heard then, and would hear now, similar complaints, some relating more to the external condition of the city, some to its police administration, but all showing that the objects for which municipal government exists have been very imperfectly attained.

[1] The New York Commission of 1876 described in equally dark colours the management of that city.—Page 5 of Report.

The other test, that of expense, is easily applied. Both the debt and the taxation of American cities have risen with unprecedented rapidity, and now stand at an alarming figure.

A table of the increase of population, valuation, taxation, and debt, in fifteen of the largest cities of the United States, from 1860 to 1875 shows the following result:—

Increase in population	. .	70·5 per cent.
„ taxable valuation	.	156·9 „
„ debt	. . .	270·9 „
„ taxation	. .	363·2 [1] „

Looking at some individual cases, we find that the debt rose as follows:—

Philadelphia	1867, $35,000,000—	1877, $64,000,000
Chicago . .	1867, $4,750,000—	1877, $13,456,000
St. Louis .	1867, $5,500,000—	1877, $16,500,000
Pittsburg .	1867, $3,000,000—	1877, $13,000,000 [2]

As respects current expenditure, New York in 1884 spent on current city purposes, exclusive of payments on account of interest on debt, sinking fund, and maintenance of judiciary, the sum of $20,232,786—equal to $16·76 (£3 : 8s.) for each inhabitant (census of 1880). In Boston, in the same year, the city expenditure was $9,909,019—equal to $27·30 (£5 : 9 : 3) for each inhabitant (census of 1880). It is of course true that much of this debt is represented by permanent improvements, yet for another large, and in some cities far larger, part there is nothing to show; it is due to simple waste or (as in New York) to malversation on the part of the municipal authorities.[3]

[1] *Municipal Development of Philadelphia*, by Messrs. Allinson and Penrose, p. 275.

[2] Article "Cities" (by Mr. S. Stern) in *Amer. Cyclop. of Polit. Science.*

[3] Mr. Stern observes: "The cost of opening or improving highways

There is no denying that the government of cities is the one conspicuous failure of the United States. The deficiencies of the National government tell but little for evil on the welfare of the people. The faults of the State governments are insignificant compared with the extravagance, corruption, and mismanagement which mark the administrations of most of the great cities. For these evils are not confined to one or two cities. The commonest mistake of Europeans who talk about America is to assume that the political vices of New York are found everywhere. The next most common is to suppose that they are found nowhere else. In New York they have revealed themselves on the largest scale. They are "gross as a mountain, monstrous, palpable." But there is not a city with a population exceeding 200,000 where the poison germs have not sprung into a vigorous life; and in some of the smaller ones, down to 70,000, it needs no microscope to note the results of their growth. Even in cities of the third rank similar phenomena may occasionally be discerned, though there, as some one has said, the jet black of New York or San Francisco dies away into a harmless gray.

For evils which appear wherever a large population is densely aggregated, there must be some general and widespread causes. What are these causes? Adequately to explain them would be to anticipate the account of the party system to be given in the latter part of this volume, for it is that party system which has, not perhaps created, but certainly enormously aggra-

and of placing sewers in streets is of course not included in this vast aggregate of moneys annually levied and debt rolled up, because the cost of those improvements is levied directly upon the land by way of assessments, and they never figure as part of the ordinary expenditure of the city."—Article "Cities," *ut supra*.

vated them, and impressed on them their specific type.[1] I must therefore restrict myself for the present to a brief enumeration of the chief sources of the malady, and the chief remedies that have been suggested for or applied to it. No political subject has been so copiously discussed of late years in America by able and experienced publicists, nor can I do better than present the salient facts in the words which some of these men, speaking in a responsible position, have employed.

The New York commissioners of 1876 appointed "to devise a plan for the government of cities in the State of New York," sum up the mischief as follows:—[2]

"1. The accumulation of permanent municipal debt: In New York it was, in 1840, $10,000,000; in 1850, $12,000,000; in 1860, $18,000,000; in 1870, $73,000,000; in 1876, $113,000,000.[3]

"2. The excessive increase of the annual expenditure for ordinary

[1] See Part III., and especially Chapters LXII. and LXIII. See also the chapters in Vol. III. on the Tweed Ring in New York City, and the Gas Ring in Philadelphia. The full account given in those chapters of the phenomena of municipal misgovernment in the two largest cities in the United States seems to dispense me from the duty of here describing those phenomena in general.

[2] The commission, of which Mr. W. M. Evarts (now senator from New York) was chairman, included some of the ablest men in the State, and its report, presented 6th March 1877, may be said to have become classical.

[3] The New York commissioners say: "The magnitude and rapid increase of this debt are not less remarkable than the poverty of the results exhibited as the return for so prodigious an expenditure. It was abundantly sufficient for the construction of all the public works of a great metropolis for a century to come, and to have adorned it besides with the splendours of architecture and art. Instead of this, the wharves and piers are for the most part temporary and perishable structures; the streets are poorly paved; the sewers in great measure imperfect, insufficient, and in bad order; the public buildings shabby and inadequate; and there is little which the citizen can regard with satisfaction, save the aqueduct and its appurtenances and the public park. Even these should not be said to be the product of the public debt; for the expense occasioned by them is, or should have been, for the most part already extinguished. In truth, the larger part of the city debt represents a vast aggregate of moneys wasted, embezzled, or misapplied."

purposes: In 1816 the amount raised by taxation was less than ½ per cent on the taxable property; in 1850, 1·13 per cent; in 1860, 1·69 per cent; in 1870, 2·17 per cent; in 1876, 2·67 per cent. . . . The increase in the annual expenditure since 1850, as compared with the increase of population, is more than 400 per cent, and as compared with the increase of taxable property, more than 200 per cent."

They suggest the following as the causes :—

1. Incompetent and unfaithful governing boards and officers.

"A large number of important offices have come to be filled by men possessing little, if any, fitness for the important duties they are called upon to discharge. . . . These unworthy holders of public trusts gain their places by their own exertions. The voluntary suffrage of their fellow-citizens would never have lifted them into office. Animated by the expectation of unlawful emoluments, they expend large sums to secure their places, and make promises beforehand to supporters and retainers to furnish patronage or place. The corrupt promises must be redeemed. Anticipated gains must be realized. Hence old and educated subordinates must be dismissed and new places created to satisfy the crowd of friends and retainers. Profitable contracts must be awarded, and needless public works undertaken. The amounts required to satisfy these illegitimate objects enter into the estimates on which taxation is eventually based, in fact they constitute in many instances a superior lien upon the moneys appropriated for government, and not until they are in some manner satisfied do the real wants of the public receive attention. It is speedily found that these unlawful demands, together with the necessities of the public, call for a sum which, if taken at once by taxation, would produce dissatisfaction and alarm in the community, and bring public indignation upon the authors of such burdens. For the purpose of averting such consequences divers pretences are put forward suggesting the propriety of raising means for alleged exceptional purposes by loans of money, and in the end the taxes are reduced to a figure not calculated to arouse the public to action, and any failure thus to raise a sufficient sum is supplied by an issue of bonds. . . . Yet this picture fails altogether to convey an adequate notion of the elaborate systems of depredation which, under the name of city governments, have from time to time

afflicted our principal cities; and it is moreover a just indication of tendencies in operation in all our cities, and which are certain, unless arrested, to gather increased force. It would clearly be within bounds to say that more than one-half of all the present city debts are the direct results of the species of intentional and corrupt misrule above described."

2. The introduction of State and national politics into municipal affairs.

"The formation of general political parties upon differences as to general principles or methods of State policy is useful, or at all events inevitable. But it is rare indeed that any such questions, or indeed any upon which good men ought to differ, arise in connection with the conduct of municipal affairs. Good men cannot and do not differ as to whether municipal debt ought to be restricted, extravagance checked, and municipal affairs lodged in the hands of competent and faithful officers. There is no more reason why the control of the public works of a great city should be lodged in the hands of a Democrat or a Republican than there is why an adherent of one or the other of the great parties should be made the superintendent of a business corporation. Good citizens interested in honest municipal government can secure that object only by acting together. Political divisions separate them at the start, and render it impossible to secure the object desired equally by both. . . . This obstacle to the union of good citizens paralyses all ordinary efforts for good municipal government. . . . The great prizes in the shape of place and power which are offered on the broad fields of national and State politics offer the strongest incentives to ambition. Personal advancement is in these fields naturally associated with the achievement of great public objects, and neither end can be secured except through the success of a political party to which they are attached. The strife thus engendered develops into a general battle in which each side feels that it cannot allow any odds to the other. If one seeks to turn to its advantage the patronage of municipal office, the other must carry the contest into the same sphere. It is certain that the temptation will be withstood by neither. It then becomes the direct interest of the foremost men of the nation to constantly keep their forces in hostile array, and these must be led by, among other ways, the patronage to be secured by the control of local affairs. . . . Next to this small

number of leading men there is a large class who, though not dishonest or devoid of public spirit, are led by habit and temperament to take a wholly partisan view of city affairs. Their enjoyment of party struggles, their devotion to those who share with them the triumphs and defeats of the political game, are so intense that they gradually lose sight of the object for which parties exist or ought to exist, and considerable proportions of them in their devotion to politics suffer themselves to be driven from the walks of regular industry, and at last become dependent for their livelihood on the patronage in the hands of their chiefs. Mingled with them is nearly as large a number to whom politics is simply a mode of making a livelihood or a fortune, and who take part in political contests without enthusiasm, and often without the pretence of an interest in the public welfare, and devote themselves openly to the organization of the vicious elements of society in combinations strong enough to hold the balance in a closely-contested election, overcome the political leaders, and secure a fair share of the municipal patronage, or else extort immunity from the officers of the law. . . . The rest of the community, embracing the large majority of the more thrifty classes, averse to engaging in what they deem the 'low business' of politics, or hopeless of accomplishing any substantial good in the face of such powerful opposing interests, for the most part content themselves with acting in accordance with their respective parties. . . . It is through the agency of the great political parties, organized and operating as above described, that our municipal officers are and have long been selected. It can scarcely be matter of wonder then that the present condition of municipal affairs should present an aspect so desperate."

3. The assumption by the legislature of the direct control of local affairs.

"This legislative intervention has necessarily involved a disregard of one of the most fundamental principles of republican government (the self-government of municipalities). . . . The representatives elected to the central (State) legislature have not the requisite time to direct the local affairs of the municipalities. . . . They have not the requisite knowledge of details. . . . When a local bill is under consideration in the legislature, its care and explanation are left exclusively to the representatives of the locality to which it is applicable; and sometimes by express, more

often by a tacit understanding, local bills are 'log-rolled' through the houses. Thus legislative duty is delegated to the local representatives, who, acting frequently in combination with the sinister elements of their constituency, shift the responsibility for wrong-doing from themselves to the legislature. But what is even more important, the general representatives have not that sense of personal interest and personal responsibility to their constituents which are indispensable to the intelligent administration of local affairs. And yet the judgment of the local governing bodies in various parts of the State, and the wishes of their constituents, are liable to be overruled by the votes of legislators living at a distance of a hundred miles. . . . To appreciate the extent of the mischief done by the occupation of the central legislative body with the consideration of a multitude of special measures relating to local affairs, some good, probably the larger part bad, one has only to take up the session laws of any year at random and notice the subjects to which they relate. Of the 808 acts passed in 1870, for instance, 212 are acts relating to cities and villages, 94 of which relate to cities, and 36 to the city of New York alone. A still larger number have reference to the city of Brooklyn. These 212 acts occupy more than three-fourths of the 2000 pages of the laws of that year. . . . The multiplicity of laws relating to the same subjects thus brought into existence is itself an evil of great magnitude. What the law is concerning some of the most important interests of our principal cities can be ascertained only by the exercise of the patient research of professional lawyers. In many instances even professional skill is baffled. Says Chief-Justice Church: 'It is scarcely safe for any one to speak confidently on the exact condition of the law in respect to public improvements in the cities of New York and Brooklyn. The enactments referring thereto have been modified, superseded, and repealed so often and to such an extent that it is difficult to ascertain just what statutes are in force at any particular time. The uncertainties arising from such multiplied and conflicting legislation lead to incessant litigation with its expensive burdens, public and private.' . . . But this is not all nor the worst. It may be true that the first attempts to secure legislative intervention in the local affairs of our principal cities were made by good citizens in the supposed interest of reform and good government, and to counteract the schemes of corrupt officials. The notion that legislative control was the proper remedy was a serious mistake.

The corrupt cliques and rings thus sought to be baffled were quick to perceive that in the business of procuring special laws concerning local affairs they could easily outmatch the fitful and clumsy labours of disinterested citizens. The transfer of the control of the municipal resources from the localities to the (State) capitol had no other effect than to cause a like transfer of the methods and arts of corruption, and to make the fortunes of our principal cities the traffic of the lobbies. Municipal corruption, previously confined within territorial limits, thenceforth escaped all bounds and spread to every quarter of the State. Cities were compelled by legislation to buy lands for parks and places because the owners wished to sell them; compelled to grade, pave, and sewer streets without inhabitants, and for no other purpose than to award corrupt contracts for the work. Cities were compelled to purchase, at the public expense, and at extravagant prices, the property necessary for streets and avenues, useless for any other purpose than to make a market for the adjoining property thus improved. Laws were enacted abolishing one office and creating another with the same duties in order to transfer official emoluments from one man to another, and laws to change the functions of officers with a view only to a new distribution of patronage, and to lengthen the terms of offices for no other purpose than to retain in place officers who could not otherwise be elected or appointed."

This last-mentioned cause of evil is no doubt a departure from the principle of local popular control and responsibility on which State governments and rural local governments have been based. It is a dereliction which has brought its punishment with it. But the resulting mischiefs have been immensely aggravated by the vices of the legislatures in a few of the States, such as New York and Pennsylvania. As regards the two former causes, they are largely due to what is called the Spoils system, whereby office becomes the reward of party service, and the whole machinery of party government made to serve, as its main object, the getting and keeping of places. Now the Spoils system, with the party machinery which it keeps oiled and greased and

always working at high pressure, is far more potent and pernicious in great cities than in country districts. For in great cities we find an ignorant multitude, largely composed of recent immigrants, untrained in self-government; we find a great proportion of the voters paying no direct taxes, and therefore feeling no interest in moderate taxation and economical administration; we find able citizens absorbed in their private businesses, cultivated citizens unusually sensitive to the vulgarities of practical politics, and both sets therefore specially unwilling to sacrifice their time and tastes and comfort in the struggle with sordid wire-pullers and noisy demagogues. In great cities the forces that attack and pervert democratic government are exceptionally numerous, the defensive forces that protect it exceptionally ill-placed for resistance. Satan has turned his heaviest batteries on the weakest part of the ramparts.

Besides these three causes on which the commissioners dwell, and the effects of which are felt in the great cities of other States as well as of New York, though perhaps to a less degree, there are what may be called mechanical defects in the structure of municipal governments, whose nature may be gathered from the account given in last chapter. There is a want of methods for fixing public responsibility on the governing persons and bodies. If the mayor jobs his patronage he can throw large part of the blame on the aldermen or other confirming council, alleging that he would have selected better men could he have hoped that the aldermen would approve his selection. If he has failed to keep the departments up to their work, he may argue that the city legislature hampered him and would not pass the requisite ordinances. Each house of a two-chambered legislature can excuse itself by pointing to the action

of the other, or of its own committees, and among the numerous members of the chambers—or even of one chamber if there be but one—responsibility is so much divided as to cease to come forcibly home to any one. The various boards and officials have generally had little intercommunication;[1] and the fact that some were directly elected by the people made these feel themselves independent both of the mayor and the city legislature. The mere multiplication of elective posts distracted the attention of the people, and deprived the voting at the polls of its efficiency as a means of reproof or commendation.[2]

To trace municipal misgovernment to its sources was comparatively easy. To show how these sources might be dried up was more difficult, though as to some obvious remedies all reformers were agreed. What seemed all but impracticable was to induce the men who had produced these evils, who used them and profited by them, who were so accustomed to them that even the honester sort did not feel their turpitude, to consent to

[1] In Philadelphia some one has observed that there were four distinct and independent authorities with power to tear up the streets, and that there was no authority upon whom the duty was specifically laid to put them in repair again.

[2] Mr. Seth Low remarks:—"Greatly to multiply important elective officers is not to increase popular control, but to lessen it. The expression of the popular will at the ballot-box is like a great blow struck by an engine of enormous force. It can deliver a blow competent to overthrow any officer, however powerful. But, as in mechanics, great power has to be subdivided in order to do fine work, so in giving expression to the popular will the necessity of choosing amid a multitude of unimportant officers involves inevitably a loss of power to the people."—*Address on Municipal Government*, delivered at Rochester, N. Y., February 1885.

A trenchant criticism of the prevailing systems of city government may be found in an article in *Scribner's Magazine* for October 1887 by Mr. G. Bradford. He argues forcibly in favour of having only one elective official, the mayor, of giving every executive function, not to a Board, but to one official only, appointed by the mayor, without confirmation by any one else, and of taking all share in executive administration out of the hands of committees of the city legislature.

the measures needed for extinguishing their own abused power and illicit gains. It was from the gangs of city politicians and their allies in the State legislatures that reforms had to be sought, and the enactment of their own abolition obtained. In vain would the net be spread in the sight of such birds.

The remedies proposed by the New York commission were the following:—

(*a*) A restriction of the power of the State legislature to interfere by special legislation with municipal governments or the conduct of municipal affairs.[1]

(*b*) The holding of municipal elections at a different period of the year from State and National elections.

(*c*) The vesting of the legislative powers of municipalities in two bodies:—A board of aldermen, elected by the ordinary (manhood) suffrage, to be the common council of each city. A board of finance of from six to fifteen members, elected by voters who had for two years paid an annual tax on property assessed at not less than $500 (£100), or a rent (for premises occupied) of not less than $250 (£50).[2] This board of finance was to have a practically exclusive control of the taxation and expenditure of each city, and of the exercise of its borrowing powers, and was in some matters to act only by a two-thirds majority.

(*d*) Limitations on the borrowing powers of the municipality, the concurrence of the mayor and two-thirds of the State legislature, as well as of two-thirds of

[1] The constitutions of eleven States now prescribe that cities shall be incorporated by general laws. This prohibition of special legislation has generally worked well, though it is sometimes evaded. See pp. 156 and 177 (Vol. II.), *ante*.

[2] This was to apply to cities with a population exceeding 100,000. In smaller cities the rent was to be $100 at least, and no minimum for the assessed value of the taxed property was to be fixed.

the board of finance being required for any loan except in anticipation of current revenue.

(*e*) An extension of the general control and appointing power of the mayor, the mayor being himself subject to removal for cause by the governor of the State.

To introduce all of these reforms it became necessary to amend the constitution of the State of New York; and the commission drafted a series of amendments accordingly. These went before the State legislature. But the birds saw the net, and naturally omitted to submit the amendments to the people. The report, in fact, fell to the ground. But in the recent legislative charters of several cities, and notably of Brooklyn (as to which see next chapter), some of the commissioners' suggestions have been adopted, and with excellent results. The most novel of them, however, and the one which excited most hostile criticism, that of creating a council elected by voters having a tax-paying (or rent-paying) qualification, has never been tried in any great city. It is deemed undemocratic; practical men say there is no use submitting it to a popular vote.[1] Nevertheless, there are still some who advocate it, appealing to the example of Australia, where it is said to have worked well.

[1] Though, as the commission pointed out (Report, p. 33), the principle that no one should vote upon any proposition to raise a tax or appropriate its proceeds unless himself liable to be assessed for such tax, was one generally applied in the village charters of the State of New York, and even in the charters of some of the smaller cities. The report repels the charge that this proposal is inconsistent with the general recognition of the value of universal suffrage by saying, "No surer method could be devised to bring the principle of universal suffrage into discredit and prepare the way for its overthrow than to pervert it to a use for which it was never intended, and subject it to a service which it is incapable of performing. . . . To expect frugality and economy in financial concerns from its operation in great cities, where perhaps half of the inhabitants feel no interest in these objects, is to subject the principle to a strain which it cannot bear. All the friends of the system should unite in rescuing it from such perils."—Page 40.

Among the other reforms in city government which I find canvassed in America are the following:—

(*a*) Civil service reform, *i.e.* the establishment of examinations as a test for admission to posts under the city, and the bestowal of these posts for a fixed term of years, or generally during good behaviour, instead of leaving the civil servant at the mercy of a partisan chief, who may displace him to make room for a party adherent or personal friend.

(*b*) The lengthening of the terms of service of the mayor and the heads of departments, so as to give them a more assured position and diminish the frequency of elections.—This has been done to some extent in recent charters—witness St. Louis (see above, p. 276) and Philadelphia.

(*c*) The vesting of almost autocratic executive power in the mayor and restriction of the city legislature to purely legislative work and the voting of supplies.—This also finds place in recent charters, notably in that of Brooklyn, and has worked, on the whole, well. It is, of course, a remedy of the "cure or kill" order. If the people are thoroughly roused to choose an able and honest man, the more power he has the better; it is safer in his hands than in those of city councils. If the voters are apathetic and let a bad man slip in, all may be lost till the next election. I do not say "all is lost," for there have been remarkable instances of men who have been sobered and elevated by power and responsibility. The Greek proverb "office will show the man" was generally taken in an unfavourable sense. The proverb of the steadier headed Germans, "office gives understanding" (*Amt gibt Verstand*), represents a more hopeful view of human nature, and one not seldom justified in American experience.

(*d*) The election of a city legislature, or one branch of it, or of a school committee, on a general ticket instead of by wards.—When aldermen or councilmen are chosen by the voters of a small local area, it is assumed, in the United States, that they must be residents within it; thus the field of choice among good citizens generally is limited. It follows also that their first duty is deemed to be to get the most they can for their own ward; they care little for the general interests of the city, and carry on a game of barter in contracts and public improvements with the representatives of other wards. Hence the general ticket system is preferable.

(*e*) The limitation of taxing powers and borrowing powers by reference to the assessed value of the taxable property within the city.—Restrictions of this nature have been largely applied to cities as well as to counties and other local authorities. The results have been usually good, yet not uniformly so, for evasions may be practised. The New York commission say: "The apparent prohibition, both as to taxation and the percentage of debt, could be readily evaded by raising the assessment. Such restrictions do not attempt to prevent the wastefulness or embezzlement of the public funds otherwise than by limiting the amount of the funds subject to depredation. The effect of such measures would simply be to leave the public necessities without adequate provision."[1] And Messrs. Allinson and Penrose observe—

"By the Constitution of 1874 it is provided that the debt of a county, city, borough, township, or school district shall never exceed 7 per cent on the assessed value of the taxable property therein.

[1] Another disadvantage is that such restriction may sometimes compel a public improvement to be executed piecemeal which could be executed more cheaply if done all at once. See page 143 (Vol. II.), *ante*.

This provision was intended to prevent the encumbering of the property of any citizen for public purposes to a greater extent than 7 per cent. In its workings it has been an absolute failure. In every city of the State, except Philadelphia, the city is part of the county government. The county has power to borrow to the extent of 7 per cent: so has the city: so has the general school district: so has the ward school district—making 28 per cent in all, which can be lawfully imposed, and has been authorized by the Act of 1874. But there is still another cause of failure to which Philadelphia is more peculiarly liable. In order to evade the provision of the Constitution limiting the power to contract debts to 7 per cent, the assessed value of property in nearly every city of the State was largely increased—in some instances, incredible as it may seem, to the extent of 1000 per cent. It is therefore clear that no sufficient protection against an undue increase of municipal debt can be found in constitutional and legislative provisions of this kind."—*Philadelphia*, a History of Municipal Development (1887), p. 276.

Nevertheless, such restrictions are now often found embodied in State constitutions, and have, so far as I could ascertain, generally diminished the evil they are aimed at.[1]

The results of these various experiments, and of others which I have not space to enumerate, are now being watched with eager curiosity by the municipal reformers of the United States. The question of city government is that which chiefly occupies practical publicists, and which newspapers and magazines incessantly discuss, because it is admittedly the weak point of the country. That adaptability of the institutions to the people and their conditions, which judicious strangers admire in the United States, and that consequent satisfaction of the people with their institutions, which contrasts so agreeably with the discontent of European nations, is wholly absent as regards municipal administration. Wherever there is

[1] See note in Appendix at the end of this volume.

a large city there are loud complaints, and Americans who deem themselves in other respects a model for the Old World are in this respect anxious to study Old World models, those particularly which the cities of Great Britain present. The best proof of dissatisfaction is to be found in the frequent changes of system and method. What Dante said of his own city may be said of the cities of America: they are like the sick man who cannot find rest upon his bed, but seeks to ease his pain by turning from side to side. Yet no one who studies the municipal history of the last decades will doubt that things are better than they were twenty years ago. The newer frames of government are an improvement upon the older. Rogues are less audacious. Good citizens are more active. Party spirit is less and less permitted to dominate and pervert municipal politics.

CHAPTER LII

AN AMERICAN VIEW OF MUNICIPAL GOVERNMENT IN THE UNITED STATES[1]

By the Hon. SETH LOW, formerly Mayor of the City of Brooklyn

A CITY in the United States is quite a different thing from a city in its technical sense, as the word is used in England. In England a city is usually taken to be a place which is or has been the seat of a bishop.[2] The head of a city government in England is a mayor, but many boroughs which are not cities are also governed by a mayor. In the United States a city is a place which has received a charter as a city from the legislature of its State. In America there is nothing whatever corresponding to the English borough. Whenever in the United States one enters a place that is presided over by a mayor, he may understand, without further inquiry, that he is in a city.

Any European student of politics who wishes to understand the problem of government in the United States, whether of city government or any other form of it, must first of all transfer himself, if he can, to a point of view precisely the opposite of that which is natural to

[1] This chapter is copyright, by Seth Low, 1888.

[2] In Scotland, where there have been, since the Revolution, no bishops, Edinburgh, Glasgow, and Aberdeen are described as cities. Westminster is a city, but has never had a bishop.

him. This is scarcely, if at all, less true of the English than of the continental student. In England as upon the continent, from time immemorial, government has descended from the top down. Until recently, society in Europe has accepted the idea, almost without protest, that there must be governing classes, and that the great majority of men must be governed. In the United States that idea does not obtain, and, what is of scarcely less importance, it never has obtained. No distinction is recognized between governing and governed classes, and the problem of government is conceived to be this, that the whole of society should learn and apply to itself the art of government. Bearing this in mind, it becomes apparent that the immense tide of immigration into the United States is a continually disturbing factor. The immigrants come from many countries, a very large proportion of them being of the classes which, in their old homes from time out of mind, have been governed. Arriving in America, they shortly become citizens in a society which undertakes to govern itself. However well-disposed they may be as a rule, they have not had experience in self-government, nor do they always share the ideas which have expressed themselves in the Constitution of the United States. This foreign element settles largely in the cities of the country. It is estimated that the population of New York City contains eighty per cent of people who either are foreign-born or who are the children of foreign-born parents. Consequently, in a city like New York, the problem of learning the art of government is handed over to a population that begins in point of experience very low down. In many of the cities of the United States, indeed in almost all of them, the population not only is thus largely untrained in the art of self-government, but it is not even

homogeneous. So that an American city is confronted not only with the necessity of instructing large and rapidly-growing bodies of people in the art of government, but it is compelled at the same time to assimilate strangely different component parts into an American community. It will be apparent to the student that either one of these functions by itself would be difficult enough. When both are found side by side the problem is increasingly difficult as to each. Together they represent a problem such as confronts no city in the United Kingdom, or in Europe.

The American city has had problems to deal with also of a material character, quite different from those which have confronted the cities of the Old World. With the exception of Boston, Philadelphia, Baltimore, New Orleans, and New York, there is no American city of great consequence whose roots go back into the distant past even of America. American cities as a rule have grown with a rapidity to which the Old World presents few parallels. London, in the extent of its growth, but not in the proportions of it, Berlin since 1870, and Rome in the last few years, are perhaps the only places in Europe which have been compelled to deal with this element of rapid growth in anything like a corresponding degree. All of these cities, London, Berlin, and Rome, are the seats of the national government, and receive from that source more or less help and guidance in their development. In all of them an immense nucleus of wealth existed before this great and rapid growth began. The problem in America has been to make a great city in a few years out of nothing. There has been no nucleus of wealth upon which to found the structure which every succeeding year has enlarged. Recourse has been had of necessity, under these conditions, to the freest use of the

public credit. The city of Brooklyn and the city of Chicago, each with a population now of three-quarters of a million of people, are but little more than fifty years old. In that period everything now there has been created out of the fields. The houses in which the people live, the water-works, the paved streets, the sewers, everything which makes up the permanent plant of a city, all have been produced while the city has been growing from year to year at a fabulous rate. Besides these things are to be reckoned the public schools, the public parks, and in the case of Brooklyn, the great bridge connecting it with New York, two-thirds of the cost of which is borne by Brooklyn. Looked at in this light the marvel would seem to be, not so much that the American cities are justly criticizable for many defects, but rather that results so great have been achieved in so short a time. The necessity of doing so much so quickly, has worked to the disadvantage of the American city in two ways. First, it has compelled very lavish expenditure under great pressure for quick results. This is precisely the condition under which the best trained business men make their greatest mistakes, and are in danger of running into extravagance and wastefulness. No candid American will deny that American cities have suffered largely in this way, not alone from extravagance and wastefulness, but also from dishonesty; but in estimating the extent of the reproach, it is proper to take into consideration these general conditions under which the cities have been compelled to work. The second disadvantage which American cities have laboured under from this state of things has been their inability to provide adequately for their current needs, while discounting the future so freely in order to provide their permanent plant. When the great American cities have paid

for the permanent plant which they have been accumulating during the last half century, so that the duty which lies before them is chiefly that of caring adequately for the current life of their population, a vast improvement in all these particulars may reasonably be expected. In other words, time is a necessary element in making a great city, as it is in every other great and enduring work. American cities are judged by their size rather than by the time which has entered into their growth. It cannot be denied that larger results could have been produced with the money expended if it always had been used with complete honesty and good judgment. But to make an intelligent criticism upon the American city, in its failures upon the material side, these elements of difficulty must be taken into consideration.

Another particular in which the American city may be thought to have come short of what might have been hoped for, may be described in general terms as a lack of foresight. It would have been comparatively easy to have preserved in all of them small open parks, and generally to have made them more beautiful, if there had been a greater appreciation of the need for these things and of the growth the cities were to attain to. The western cities probably have erred in this regard less than those upon the Atlantic coast. But while it is greatly to be regretted that this large foresight has not been displayed, it is after all only repeating in America what has taken place in Europe. The improvement of cities seems everywhere to be made by tearing down and replacing at great cost, rather than by a far-sighted provision for the demands and opportunities of the future. These unfortunate results in America have flowed largely from two causes: first, from inability on

the part of the cities to appreciate in advance the phenomenal growth that is coming upon them; and second, from the frequent tendency of population to grow in precisely the direction where it was not expected to. A singular illustration of this last factor is to be found in the city of Washington. The Capitol was made to face towards the east, under the impression that population would settle in that direction; as matter of fact the city has grown towards the west, so that the Capitol stands with its back to the city and faces a district that is scarcely built upon at all.

Probably no detail strikes the eye of the foreigner more unfavourably in connection with the average American city than the poor paving of the streets and their lack of cleanliness. The comparison with cities of Europe in these respects is immensely to the disadvantage of the American city. But, in this connection, it is not unfair to call attention to the fact that the era of good paving and clean streets in Europe is scarcely more than thirty years old. Poor as is the condition of the streets in most American cities now, it would be risking very little to say that it would average much higher than ten years ago. There are several contributing causes which are reflected in this situation that represent difficulties from which most European cities are free. In the first place, frost strikes much deeper in America, and is more trying to the pavements in every way. In the next place, the streets are more often disturbed in connection with gas pipes, steam pipes, and telegraph service, than in European cities. But, apart from these incidental difficulties, the fundamental trouble in connection with the streets of American cities is the lack of sufficient appropriations to put them in first-class condition and to keep them so, both

as to paving and as to cleaning. The reason for this has been pointed out.

All the troubles, however, which have marked the development of cities in the United States are not due to these causes. Cities in the United States, as forms of government, are of comparatively recent origin. The city of Boston, for example, in the State of Massachusetts, although the settlement was founded more than two hundred and fifty years ago, received its charter as a city so recently as 1822. The city of Brooklyn received its charter from the State of New York in 1835. In other words, the transition from village and town government into government by cities, has simply followed the transition of small places into large communities. This suggests another distinction between the cities of the United States and those of Great Britain. The great cities of England and of Europe, with few exceptions, have their roots in the distant past. Many of their privileges and chartered rights were wrested from the Crown in feudal times. Some of these privileges have been retained, and contribute to the income, the pride, and the influence of the municipality. The charter of an American city represents no element of prestige or inspiration. It is only the legal instrument which gives the community authority to act as a corporation, and which defines the duties of its officers. The motive for passing from town government to city government in general has been the same everywhere—to acquire a certain readiness of action, and to make more available the credit of the community in order to provide adequately for its own growth. The town meeting, in which every citizen takes part, serves its purpose admirably in communities up to a certain size, or for the conducting of public work on not too large

a scale. But the necessity for efficiency in providing for the needs of growth has compelled rapidly-growing communities, in all the States, to seek the powers of a corporation as administered through a city government. Growing thus out of the town, it happened very naturally that the first conception of the city on the part of Americans was that which had applied to the town and the village as local subdivisions of the commonwealth. Charters were framed as though cities were little states. Americans are only now learning, after many years of bitter experience, that they are not so much little states as large corporations. Many of the mistakes which have marked the progress of American cities up to this point have sprung from that defective conception. The aim deliberately was, to make a city government where no officer by himself should have power enough to do much harm. The natural result of this was to create a situation where no officer had power to do much good. Meanwhile bad men united for corrupt purposes, and the whole organization of the city government aided such in throwing responsibility from one to another. Many recent city charters in the United States proceed upon the more accurate theory that cities, in their organic capacity, are chiefly large corporations. The better results flowing from this theory are easily made clear. Americans are sufficiently adept in the administration of large business enterprises to understand that, in any such undertaking, some one man must be given the power of direction and the choice of his chief assistants; they understand that power and responsibility must go together from the top to the bottom of every successful business organization. Consequently, when it began to be realized that a city was a business corporation rather than an integral part

of the State, the unwillingness to organize the city upon the line of concentrated power in connection with concentrated responsibility began to disappear. The charter of the city of Brooklyn is probably as advanced a type as can be found of the results of this mode of thinking. In Brooklyn the executive side of the city government is represented by the mayor and the various heads of departments. The legislative side consists of a common council of nineteen members, twelve of whom are elected from three districts each having four aldermen, the remaining seven being elected as aldermen at large by the whole city. The people elect three city officers besides the board of aldermen; the mayor, who is the real, as well as the nominal, head of the city; the comptroller, who is practically the book-keeper of the city; and the auditor, whose audit is necessary for the payment of every bill against the city whether large or small. The mayor appoints absolutely, without confirmation by the common council, all the executive heads of departments. He appoints, for example, the police commissioner, the fire commissioner, the health commissioner, the commissioner of city works, the corporation counsel or counsellor at law, the city treasurer, the tax collector, and in general all the officials who are charged with executive duties. These officials in turn appoint their own subordinates, so that the principle of defined responsibility permeates the city government from top to bottom. The mayor also appoints the board of assessors, the board of education, and the board of elections. The executive officers appointed by the mayor are appointed for a term of two years, that is to say, for a term similar to his own. The mayor is elected at the general election in November; he takes office on the first of January following, and for one

month the great departments of the city are carried on for him by the appointees of his predecessor. On the first of February it becomes his duty to appoint his own heads of departments, and inasmuch as they serve for the same term as himself, each incoming mayor thus has the opportunity to make an administration in all its parts in sympathy with himself. Each one of these great executive departments is under the charge of a single head, the charter of the city conforming absolutely, with one exception which is felt to be an anomaly, to the theory that where executive work is to be done it should be committed to the charge of one man. Where boards of officials exist in Brooklyn, it is because the work committed to them is discretionary more than it is executive in character. These boards, also, are appointed by the mayor without confirmation by the board of aldermen, but they are appointed for terms not coterminous with his own; so that, in most cases, no mayor would appoint the whole of any such board unless he were to be twice elected by the people. In other words, with quite unimportant exceptions, the charter of Brooklyn, a city with 750,000 inhabitants, makes the mayor entirely responsible for the conduct of the city government on its executive side, and, in holding him to this responsibility, equips him fearlessly with the necessary power to discharge his trust. This charter went into effect on the first of January 1882. It has been found to have precisely the merits and the defects which one might expect of such an instrument. A strong executive can accomplish satisfactory results; a weak one can disappoint every hope. The community, however, is so well satisfied that the charter is a vast improvement on any system which it has tried before,

that no voice is raised against it. It has had one notable and especially satisfactory effect. It can be made clear to the simplest citizen that the entire character of the city government for two years depends upon the man chosen for the office of mayor. As a consequence more people have voted in Brooklyn on the subject of the mayoralty than have voted there as to who should be State Governor or who should be President. This is a great and a direct gain for good city government, because it creates and keeps alert a strong public sentiment, and tends to increase the interest of all citizens in the affairs of their city. In the absence of a historic past which ministers to civic pride, and in the presence of many thousands of new-comers at every election, this effect is especially valuable. It may also be said that under present conditions the voting is more intelligent than formerly. The issue is so important, yet so simple, that it can be made clear even to people who have lived but a short time in the city. The same influences tend to secure for the city the services, as mayor, of a higher grade of men, because under such a charter the mayor is given power and opportunity to accomplish something. It appeals to the best that is in a man as strongly as it exposes him to the fire of criticism if he does not do well.

In undertaking to administer this charter, as the first mayor to whom such powers had been committed, the writer adopted two principles which he believed to be essential to success. In the first place, he determined to hold each head of department responsible for results within his department; and in the second place, he determined to hold himself entirely aloof from the use of patronage, except in so far as the charter of the city, in express terms, made it his duty to make appoint-

ments. The effect of this attitude towards his appointees was to leave them entirely free in the choice of their subordinates. Being free, they could justly be held responsible, to the fullest extent, for results. Further than that, being free from pressure from the mayor, they were much stronger to resist pressure as to patronage from outsiders, than otherwise they would have been. Another effect of the mayor's attitude with reference to patronage, was to secure for himself the confidence of the community, without regard to party, to an unusual extent. Any alarm there might have been, as to the use of the great and unusual powers committed to the mayor by the charter, was quieted at once.

The duties of the mayor under the charter may be considered under three heads. First, in his relation to the executive work of the city; second, in his relation to the common council or local legislature; third, in his relation to the legislature of the State.

The successful use of the power of appointment, in the selection of efficient heads of departments, of course underlies the success of a city administration on its executive side. The heads of departments having been appointed, it was the custom of the writer to hold a meeting in the mayor's office with all his executive appointees, once every week, excepting during the summer when the common council was not in session. This meeting served several purposes. The minutes of the common council at their previous meeting were laid before this informal gathering, and the mayor received the advice of the officer whose department would be affected by any proposed resolution or ordinance, as to its probable effect. When a question was brought up of general interest to the city the whole company discussed it, giving to the mayor the advantage of their

experience and judgment. These weekly councils were of great value to the mayor, in determining his attitude on the various questions raised during his term by the common council of the city, every resolution of which body had by law to be passed upon by the mayor, and receive either his approval or his veto. These gatherings of the executive officers of the city were useful in other ways than this. They made all heads of departments personally acquainted with each other, and converted the machinery of the city government, from separate and independent departments, into one organization working in complete harmony and with singleness of aim. The mayor's oversight of the executive work of the city, in its current aspect, was further maintained by quarterly reports submitted from each of the large departments. The mayor's office, in an American city, is in receipt of daily complaints touching this or that matter affecting one or more of the citizens. The receipt of all complaints was immediately acknowledged to the persons who made them, if they came by mail, and the complaints were forwarded at once to the proper department for action or explanation. The reply was made to the mayor's office, and was communicated without delay to the maker of the complaint. If remedy was available, this method secured its prompt application. If the matter were beyond reach of remedy, the citizen had at least the satisfaction of knowing why. The multiplicity and character of these complaints gave the mayor a daily insight into the efficiency of the departments. By these methods, the mayor was able to keep himself almost as well informed as to the work in each department of the city as the head of a great business house is informed as to the departments into which his business is divided. Nor

need the comparison stop there. The mayor was able to bring the power and influence of his office to bear, to remedy abuses or to suggest improvements in methods, with the same directness and efficiency.

The mayor's duties in relation to the common council of the city, are chiefly in connection with the obligation, laid upon him by the charter, to approve or disapprove every resolution passed by that body. The mayor's veto is fatal, unless overridden by a two-thirds vote of all the members elected to the council. For three years out of four during which the writer served as mayor, the common council was politically antagonistic to him, half of the time in the proportion of fourteen to five. Notwithstanding this, only two vetoes were overridden in the whole of his four years of service. Two influences probably contributed to this result. First, the care with which, under the advice of his appointees, the mayor took up his positions: and second, the mayor's refusal to implicate himself, in any way, with the use of patronage. Partisan opposition largely disappeared, before a spirit manifestly free from self-seeking and from partisanship. The same influences led to unusual co-operation, on the part of the common council, in forwarding the plans of the mayor in the direction of positive action. The harmony between the executive and the legislature of the city was scarcely less complete, during this interval, to the great advantage of the city, than was the harmony between the different executive departments themselves.

The relation of the mayor to the legislature of the State proved to be important to an extent not easy to be imagined. The charter of a city, coming as it does from the legislature, is entirely within the control of the legislature. Just as there is no legal bar to prevent

the legislature from recalling the charter altogether, so there is no feature of the charter so minute that the legislature may not assume to change it. In the State of New York there is no general law touching the government of cities, and the habit of interference in the details of city action has become to the legislature almost a second nature. In every year of his term, the writer was compelled to oppose at Albany, the seat of the State legislature, legislation seeking to make an increase in the pay of policemen and firemen, without any reference to the financial ability of the city, or the other demands upon the city for the expenditure of money. Efforts were made, also, at one time, to legislate out of office some of the officials who had been appointed in conformity to the charter. New and useless offices were sought to be created, and the mayor found that not the least important of his duties, as mayor, was to protect the city from unwise and adverse legislation on the part of the State. It is a curious circumstance that most of these propositions had their origin with members of the legislature elected to represent different districts of the city itself. The same influences which made the administration strong with the common council, at home, made it also strong with the legislature at Albany, so that, although for one or two years the power to make changes rested with a majority at Albany politically antagonistic, no law objected to by the mayor, during this interval, was placed upon the statute-book. The city itself is compelled at times to seek legislation for the enlargement of its powers; that is to say, the powers committed to a city are strictly limited to those defined by the charter or granted by special acts of the legislature. Consequently, when an unforeseen situation is to be dealt with, calling for unusual methods or

powers, it is necessary to secure authority to this end from the legislature of the State. The writer found the same general attitude, which has been referred to so often, effectual in this regard also, so that almost every bill which he desired in the interest of the city, was enacted into law, and this alike by legislatures politically in sympathy with the city administration and by legislatures politically antagonistic to it. It is not too much to say, however, that the greatest anxieties of his term sprang from the uncertainties and difficulties of this annual contest, on the one hand to advance the interest of the city, and on the other to save it from harm in its relations to the law-making power of the State.

Imitating this charter of Brooklyn, the city of Philadelphia, still more recently, has obtained a new charter involving a great departure in the same direction from old methods. Boston and New York both have moved partly along the same line, each with admitted advantage to the city, although neither has gone so far as Brooklyn or Philadelphia. Several smaller places have obtained charters of the same kind. It is not to be supposed that this new form of city charter is the result altogether of abstract thinking. It has grown out of bitter experiences. When the inhabitants of a city found that they did not receive, as matter of fact, the good government which they desired, it did not at first occur to them that the trouble was to a large extent fundamental in their form of charter; or, if it did, the first effort at remedy led to worse mistakes than before. Starting with the theory that the path to safety was through division of power, they resorted to all manner of expedients which would compass that end. They established, for instance, police boards and fire boards, which at different times were

made to consist of three members, and at other times of four, the latter being known in American parlance as non-partisan.[1] It was supposed that a single individual might be tempted to use his department unfairly in the interest of the party to which he belonged, but that by associating him with others of different parties this tendency would be overcome. It turned out, however, that the moment no one in particular was to blame, partisanship took complete possession of the administration of every department. When one reflects that in the Government of the United States the immense administrative departments, like the Treasury and the Post-Office, have, from the beginning of the Government, been committed to the care of a single man, it seems strange that, in their cities, Americans should have been so unwilling to proceed upon the same theory. The reason probably is that the city, as above pointed out, has been evolved from the town by the simple process of enlargement. In the town the theory of division of power has been acted upon with substantial uniformity, and in small communities has worked well. The attempt to act upon the same lines in the great and rapidly-growing cities of the country has, in the judgment of many, been as instrumental as any other one element in causing the unsatisfactory results which have marked the progress of many American cities. For the purposes of this chapter it is not necessary to enlarge further upon this thought. It is emphasized thus far for the purpose of showing that all the large class of difficulties which American cities have been obliged to face by reason of faulty charters are not irremediable. The actual process of change from one system of charter to another has been

[1] Non-partisan practically means that the two great parties are equally represented upon it.

marked incidentally by one unfortunate effect. The city charter, coming as it does from the legislature, lies entirely within the control of the legislature. The many appeals to the legislature for charter amendment of one kind and another have bred a habit in some of the States, if not in all, of constant interference by the legislature with the local details of city action. This interference, though often prompted by a genuine desire to relieve a city from pressing evils, has tended very greatly to lessen the sense of responsibility on the part of local officials, and upon the part of communities themselves. It is one of the best effects of Brooklyn's charter, that it has helped to create in that city a very decided spirit of home rule, which is ready to protest at any moment against interference on the part of the State with local matters.

It remains to be said that the one organic problem in connection with the charters of cities, which apparently remains as far from solution as ever in America, is that which concerns the legislative branch of city government. In some cities the legislative side is represented by two bodies, or houses, known by different names in different cities, and presenting the same general characteristics as a State legislature with its upper and lower house. The most conspicuous instances of this kind are furnished by the city of Boston and the city of Philadelphia. In all the cities of New York State, the legislative branch consists of a single chamber indifferently spoken of as the Board of Aldermen or the Common Council. But whether these bodies have been composed of one house or two, the moment a city has become large they have ceased to give satisfactory results. Originally these bodies were given very large powers, in order to carry out to the utmost the idea of

local self-government. As a rule they have so far abused these powers that almost everywhere the scope of their authority has been greatly restricted. In the city of New York that tendency has been acted upon to so great an extent as to deprive the common council of every important function it ever possessed, except the single power to grant public franchises. How greatly they have abused this remaining power is unfortunately matter of public record. The powers thus taken away from the common council, are ordinarily lodged with boards made up of the higher city officials. Even in the city of New York it has seldom been the case that the mayor of the city has not been a man of good repute and of some parts. As a general proposition, it is found in American cities that the larger the constituency to which a candidate must appeal, and the more important the office, the more of a man the candidate must be. What may be the outcome of this difficulty as to the legislative body in cities, it is impossible to say. Sometimes it seems almost as though the attempt would be made to govern cities without any local legislature. But, on the other hand, there are so many matters in regard to which such a body ought to have power, that thus far no one has ventured seriously to take so extreme a view. It may fairly be said to be, therefore, the great unsolved organic problem in connection with municipal government in the United States. That it is so, illustrates with vividness the justice of the American view that it is a dangerous thing, in wholly democratic communities, to make the legislative body supreme over the executive.

Thus far in this chapter, the shortcomings of the American city have been admitted, and the effort has been made to show the peculiar difficulties with which

such a city has to deal. It ought to be said that, despite all of these difficulties, the average American city is not going from bad to worse. There is substantial reason for thinking that the general tendency, even in the larger cities, is towards improvement. Life and property are more secure in almost all of them than they used to be. Certainly there has been no decrease of security such as might reasonably have been expected to result from increased size. Less than a score of years ago it was impossible to have a fair election in New York or Brooklyn. To-day, and for the last decade, under the present system of registry laws, every election is held with substantial fairness. The health of our cities does not deteriorate, but on the average improves. So that in the large and fundamental aspect of the question the progress, if slow, is steady in the direction of better things. It is not strange that a people conducting an experiment in city government for which there is absolutely no precedent, under conditions of exceptional difficulty, should have to stumble towards correct and successful methods through experiences which may be both costly and distressing. There is no other road towards improvement in the coming time. But it is probable that in another decade Americans will look back on some of the scandals of the present epoch in city government, with as much surprise as they now regard the effort to control fires by the volunteer fire department, which was insisted upon, even in the city of New York, until within twenty years. As American cities grow in stability, and provide themselves with the necessary working plant, they approximate more and more in physical conditions to those which prevail in most European cities. As they do so, it is reasonable to expect that their pavements

will improve and the cleansing of their streets will be more satisfactory. American cities, as a rule, have a more abundant supply of water than European cities, and they are much more enterprising in furnishing themselves with what in Europe might be called the luxuries of city life, but which, in America, are so common as almost to be regarded as necessities. Especially is this true of every convenience involving the use of electricity. There are more telephone wires, for example, in New York and Brooklyn, than in the whole of the United Kingdom. The problem of placing these wires underground therefore, to take in passing an illustration, of another kind, of the difficulties of city government in America, is vastly greater than in any city abroad, because the multiplication of the wires is so constant and at so rapid a rate that as fast as some are placed beneath the surface, those which have been strung while this process has been going on seem as numerous as before the underground movement began.

It may justly be said, therefore, that the American city, if open to serious blame, is also deserving of much praise. Every one understands that universal suffrage has its drawbacks, and in cities these defects become especially evident. It would be uncandid to deny that many of the problems of American cities spring from this factor, especially because the voting population is continually swollen by foreign immigrants whom time alone can educate into an intelligent harmony with the American system. But because there is scum upon the surface of a boiling liquid, it does not follow that the material, nor the process to which it is subjected, is itself bad. Universal suffrage, as it exists in the United States, is not only a great element of safety in the present day and generation, but is perhaps the

mightiest educational force to which the masses of men ever have been exposed. In a country where wealth has no hereditary sense of obligation to its neighbours, it is hard to conceive what would be the condition of society if universal suffrage did not compel every one having property to consider, to some extent at least, the well-being of the whole community.

It is probable that no other system of government would have been able to cope any more successfully, on the whole, with the actual conditions that American cities have been compelled to face. It may be claimed for American institutions even in cities, that they lend themselves with wonderfully little friction to growth and development and to the peaceful assimilation of new and strange populations. Whatever defects have marked the progress of such cities, no one acquainted with their history will deny that since their problem assumed its present aspect, progress has been made, and substantial progress, from decade to decade. The problem will never be anything but a most difficult one, but with all its difficulties there is every reason to be hopeful.

PART III

THE PARTY SYSTEM

CHAPTER LIII

POLITICAL PARTIES AND THEIR HISTORY

In the preceding chapters I have endeavoured to describe the legal framework of American government as it exists both in the nation and in the States. Beginning from the Federal and State Constitutions we have seen what sort of a structure has been erected upon them as a foundation, what methods of legislation and administration have been developed, what results these methods have produced. It is only occasionally and incidentally that we have had to consider the influence upon political bodies and methods of those extra-legal groupings of men which we call political parties. But the spirit and force of party has in America been as essential to the action of the machinery of government as steam is to a locomotive engine; or, to vary the simile, party association and organization are to the organs of government almost what the motor nerves are to the muscles, sinews, and bones of the human body. They transmit the motive power, they determine the directions in which the organs act. A description of them is therefore a necessary complement to an account of the Constitution and government; for it is into the hands of the parties that the working of the government has fallen. Their ingenuity, stimulated

by incessant rivalry, has turned many provisions of the Constitution to unforeseen uses, and given to the legal institutions of the country no small part of their present colour.

To describe the party system is, however, much harder than it has been to describe those legal institutions. Hitherto we have been on comparatively firm ground, for we have had definite data to rely upon, and the facts set forth have been mostly patent facts which can be established from books and documents. But now we come to phenomena for a knowledge of which one must trust to a variety of flying and floating sources, to newspaper paragraphs, to the conversation of American acquaintances, to impressions formed on the spot from seeing incidents and hearing stories and anecdotes, the authority for which, though it seemed sufficient at the time, cannot always be remembered. Nor have I the advantage of being able to cite any previous treatise on the subject; for though the books and articles dealing with the public life of the United States may be counted by hundreds, I know of no author who has set himself to describe impartially the actual daily working of that part of the vast and intricate political machine which lies outside the Constitution, nor, what are more important still, the influences which sway the men by whom this machine has been constructed and is daily manipulated. The task, however, cannot be declined; for it is that very part of my undertaking which, even though imperfectly performed, may be most serviceable to the student of modern politics. A philosopher in Germany, who had mastered all the treatises on the British Constitution, perused every statute of recent years, and even followed through the newspapers the debates in Parliament, would know far less about the government

and politics of England than he might learn by spending a month there conversing with practical politicians, and watching the daily changes of sentiment during a parliamentary crisis or a general election.

So, too, in the United States, the actual working of party government is not only full of interest and instruction, but is so unlike what a student of the Federal Constitution could have expected or foreseen, that it is the thing of all others which any one writing about America ought to try to portray. In the knowledge of a stranger there must, of course, be serious gaps. I am sensible of the gaps in my own. But since no native American has yet essayed the task of describing the party system of his country, it is better that a stranger should address himself to it, than that the inquiring European should have no means of satisfying his curiosity. And a native American writer, even if he steered clear of partisanship, which I think he might, for in no country does one find a larger number of philosophically judicial observers of politics, would suffer from his own familiarity with many of those very things which a stranger finds perplexing. Describe English politics to an intelligent foreigner and you will find his questions directed to the points which you have passed over, because obvious to yourself, while they may probably suggest to you new aspects which it has never occurred to you to consider. Thus European and perhaps even American readers may find in the sort of perspective which a stranger gets of transatlantic phenomena some compensation for his necessarily inferior knowledge of details.

In America the great moving forces are the parties. The government counts for less than in Europe, the parties count for more; and the fewer have become their

principles and the fainter their interest in those principles, the more perfect has become their organization. The less of nature the more of art; the less spontaneity the more mechanism. But before I attempt to describe this organization, something must be said of the doctrines which the parties respectively profess, and the explanation of the doctrines involves a few preliminary words upon the history of party in America.

Although the early colonists carried with them across the sea some of the habits of English political life, and others may have been subsequently imitated from the old country, the parties of the United States are pure home growths, developed by the circumstances of the nation. The English reader who attempts, as Englishmen are apt to do, to identify the great American parties with his own familiar Whigs and Tories, or even to discover a general similarity between them, had better give up the attempt, for it will lead him hopelessly astray. Here and there we find points of analogy rather than of resemblance, but the moment we try to follow out the analogy it breaks down, so different are the issues on which English and American politics have turned.

In the United States, the history of party begins with the Constitutional Convention of 1787 at Philadelphia. In its debates and discussions on the drafting of the Constitution there were revealed two opposite tendencies, which soon afterwards appeared on a larger scale in the State Conventions, to which the new instrument was submitted for acceptance. These were the centrifugal and centripetal tendencies—a tendency to maintain both the freedom of the individual citizen and the independence in legislation, in administration, in jurisdiction, indeed in everything except foreign policy and national defence, of the several States; an opposite

tendency to subordinate the States to the nation and vest large powers in the central Federal authority.

The charge against the Constitution that it endangered State rights evoked so much alarm that some States were induced to ratify only by the promise that certain amendments should be added, which were accordingly accepted in the course of the next three years. When the machinery had been set in motion by the choice of George Washington as president, and with him of a Senate and a House of Representatives, the tendencies which had opposed or supported the adoption of the Constitution reappeared not only in Congress but in the President's cabinet, where Alexander Hamilton, secretary of the treasury, counselled a line of action which assumed and required the exercise of large powers by the Federal government, while Jefferson, the secretary of state, desired to practically restrict its action to foreign affairs. The advocates of a central national authority had begun to receive the name of Federalists, and to act pretty constantly together, when an event happened which, while it tightened their union, finally consolidated their opponents also into a party. This was the creation of the French Republic and its declaration of war against England. The Federalists, who were shocked by the excesses of the Terror of 1793, counselled neutrality, and were more than ever inclined to value the principle of authority, and to allow the Federal power a wide sphere of action. The party of Jefferson, who had now retired from the administration, were pervaded by sympathy with French ideas, were hostile to England whose attitude continued to be discourteous, and sought to restrict the interference of the central government with the States, and to allow the fullest play to the sentiment of State independence, of local independence,

of personal independence. This party took the name of Republicans or Democratic Republicans, and they are the predecessors of the present Democrats. Both parties were, of course, attached to republican government—that is to say, were alike hostile to a monarchy. But the Jeffersonians had more faith in the masses and in leaving things alone, together with less respect for authority, so that in a sort of general way one may say that while one party claimed to be the apostles of Liberty, the other represented the principle of Order.

These tendencies found occasions for combating one another, not only in foreign policy and in current legislation, but also in the construction and application of the Constitution. Like all documents, and especially documents which have been formed by a series of compromises between opposite views, it was and is susceptible of various interpretations, which the acuteness of both sets of partisans was busy in discovering and expounding. While the piercing intellect of Hamilton developed all those of its provisions which invested the Federal Congress and President with far-reaching powers, and sought to build up a system of institutions which should give to these provisions their full effect, Jefferson and his coadjutors appealed to the sentiment of individualism, strong in the masses of the people, and, without venturing to propose alterations in the text of the Constitution, protested against all extensions of its letter, and against all the assumptions of Federal authority which such extensions could be made to justify. Thus two parties grew up with tenets, leaders, impulses, sympathies, and hatreds, hatreds which soon became so bitter as not to spare the noble and dignified figure of Washington himself, whom the angry Republicans assailed with invectives the more unbe-

coming because his official position forbade him to reply.[1]

At first the Federalists had the best of it, for the reaction against the weakness of the old Confederation which the Union had superseded disposed sensible men to tolerate a strong central power. The President, though not a member of either party, was, by force of circumstances, as well as owing to the influence of Hamilton, practically with the Federalists. But during the presidency of John Adams, who succeeded Washington, they committed grave errors. When the presidential election of 1800 arrived, it was seen that the logical and oratorical force of Hamilton's appeals to the reason of the nation told far less than the skill and energy with which Jefferson played on their feelings and prejudices. The Republicans triumphed in the choice of their chief, who retained power for eight years (he was re-elected in 1804), to be peaceably succeeded by his friend Madison for another eight years (elected in 1808, re-elected in 1812), and his disciple Monroe for eight years more (elected in 1816, re-elected in 1820). Their long-continued tenure of office was due not so much to their own merits, for neither Jefferson nor Madison conducted foreign affairs with success, as to the collapse of their antagonists. The Federalists never recovered from the blow given in the election of 1800. They lost Hamilton by death in 1803. No other leader of equal gifts appeared, and the party, which had shown little judgment in the critical years 1810-14, finally disappears from sight after the second peace with England in 1815.

One cannot note the disappearance of this brilliant

[1] In mockery of the title he had won from public gratitude a few years before, he was commonly called by them "The stepfather of his country."

figure, to Europeans the most interesting in the earlier history of the Republic, without the remark that his countrymen seem to have never, either in his lifetime or afterwards, duly recognized his splendid gifts. Washington is, indeed, a far more perfect character. Washington stands alone and unapproachable, like a snow-peak rising above its fellows into the clear air of morning, with a dignity, constancy, and purity which have made him the ideal type of civic virtue to succeeding generations. No greater benefit could have befallen the republic than to have such a type set from the first before the eye and mind of the people. But Hamilton, of a virtue not so flawless, touches us more nearly, not only by the romance of his early life and his tragic death, but by a certain ardour and impulsiveness, and even tenderness of soul, joined to a courage equal to that of Washington himself. Equally apt for war and for civil government, with a profundity and amplitude of view rare in practical soldiers or statesmen, he stands in the front rank of a generation never surpassed in history, a generation which includes Burke and Fox and Pitt and Grattan, Stein and Hardenberg and William von Humboldt, Wellington and Napoleon. Talleyrand, who seems to have felt for him something as near affection as that cold heart could feel, said, after knowing all the famous men of the time, that only Fox and Napoleon were Hamilton's equals, and that he had divined Europe, having never seen it.

This period (1788-1824) may be said to constitute the first act in the drama of American party history. The people, accustomed hitherto to care only for their several commonwealths, learn to value and to work their new national institutions. They become familiar with the Constitution itself, as partners get to know, when disputes

arise among them, the provisions of the partnership deed under which their business has to be carried on. It is found that the existence of a central Federal power does not annihilate the States, so the apprehensions on that score are allayed. It is also discovered that there are unforeseen directions, such for instance as banking and currency, through which the Federal power can strengthen its hold on the nation. Differences of view and feeling give rise to parties, yet parties are formed by no means solely on the basis of general principles, but owe much to the influence of prominent personalities, of transient issues, of local interests or prejudices. The small farmers and the Southern men generally follow the Republican standard borne aloft by the great State of Virginia, while the strength of the Federalists lies in New England and the middle States, led sometimes by Massachusetts, sometimes by Pennsylvania. The commercial interest was with the Federalists, and the staid solid Puritanism of all classes, headed by the clergy. Some one indeed has described the struggle from 1796 to 1808 as one between Jefferson, who was an avowed free-thinker, and the New England ministers, and no doubt the ministers of religion did in the Puritan States exert a political influence approaching that of the Presbyterian clergy in Scotland during the seventeenth century. Jefferson's importance lies in the fact that he became the representative not merely of democracy, but of local democracy, of the notion that government is hardly wanted at all, that the people are sure to go right if they are left alone, that he who resists authority is *prima facie* justified in doing so, because authority is *prima facie* tyrannical, that a country where each local body in its own local area looks after the objects of common concern, raising and administering any such

funds as are needed, and is interfered with as little as possible by any external power, comes nearest to the ideal of a truly free people. Some intervention on the part of the State there must be, for the State makes the law and appoints the judges of appeal; but the less one has to do with the State, and *a fortiori* the less one has to do with the less popular and more encroaching Federal authority, so much the better. Jefferson impressed this view on his countrymen with so much force and such personal faith that he became a sort of patron saint of freedom in the eyes of the next generation, who used to name their children after him,[1] and to give dinners and deliver high-flown speeches on his birthday, a festival only second in importance to the immortal Fourth of July. He had borrowed from the Revolutionists of France even their theatrical ostentation of simplicity. He rejected the ceremonial with which Washington had sustained the chief magistracy of the nation, declaring that to him there was no majesty but that of the people.

As New England was, by its system of local self-government through the town meeting, as well as by the absence of slavery, in some respects the most democratic part of the United States, it may seem surprising that it should have been a stronghold of the Federalists. The reason is to be found partly in its Puritanism, which revolted at the deism or atheism of the French revolutionists, partly in the interests of its shipowners and merchants, who desired above all things a central government which, while strong enough to make and carry out treaties with England and so secure the development of American

[1] It is related of a New England clergyman that when, being about to baptize a child, he asked the father the child's name, and the father replied, "Thomas Jefferson," he answered in a loud voice, "No such unchristian name: John Adams, I baptize thee," with the other sacramental words of the rite.

commerce, should be able also to reform the currency of the country and institute a national banking system. Industrial as well as territorial interests were already beginning to influence politics. That the mercantile and manufacturing classes, with all the advantages given them by their wealth, their intelligence, and their habits of co-operation, should have been vanquished by the agricultural masses, may be ascribed partly to the fact that the democratic impulse of the War of Independence was strong among the citizens who had grown to manhood between 1780 and 1800, partly to the tactical errors of the Federalist leaders, but largely also to the skill which Jefferson showed in organizing the hitherto undisciplined battalions of Republican voters. Thus early in American history was the secret revealed, which Europe is only now discovering, that in free countries with an extended suffrage, numbers without organization are helpless and with it omnipotent.

I have ventured to dwell on this first period, because being the first it shows the origin of tendencies which were to govern the subsequent course of party strife. But as I am not writing a history of the United States I pass by the particular issues over which the two parties wrangled, most of them long since extinct. One remark is however needed as to the view which each took of the Constitution. Although the Federalists were in general the advocates of a loose and liberal construction of the fundamental instrument, because such a construction opened a wider sphere to Federal power, they were ready, whenever their local interests stood in the way, to resist Congress and the executive, alleging that the latter were overstepping their jurisdiction. In 1814 several of the New England States, where the opposition to the war then being waged with England was strongest, sent

delegates to a convention at Hartford, which, while discussing the best means for putting an end to the war and restricting the powers of Congress in commercial legislation, was suspected of meditating a secession of the trading States from the Union. On the other hand, the Republicans did not hesitate to stretch to their utmost, when they were themselves in power, all the authority which the Constitution could be construed to allow to the executive and the Federal government generally. The boldest step which a president has ever taken, the purchase from Napoleon of the vast territories of France west of the Mississippi which went by the name of Louisiana, was taken by Jefferson without the authority of Congress. Congress subsequently gave its sanction. But Jefferson and many of his friends held that under the Constitution even Congress had not the power to acquire new territories to be formed into States. They were therefore in the dilemma of either violating the Constitution or losing a golden opportunity of securing the Republic against the growth on its western frontier of a powerful and possibly hostile foreign state. Some of them tried to refute their former arguments against a lax construction of the Constitution, but many others avowed the dangerous doctrine that if Louisiana could be brought in only by breaking down the walls of the Constitution, broken they must be.[1]

The disappearance of the Federal party between 1815 and 1820 left the Republicans masters of the field. But in the United States if old parties vanish nature pro-

[1] The best authorities now hold that the Constitution did really permit the Federal government to acquire the new territory, and Congress to form States out of it.—See the interesting pamphlet of Judge Thomas M. Cooley, *The Purchase of Louisiana*, Indianapolis, 1886. Many of the Federalist leaders warmly opposed the purchase, but the far-seeing patriotism of Hamilton defended it.

duces new ones. Sectional divisions soon arose among the men who joined in electing Monroe in 1820, and under the influence of the personal hostility of Henry Clay and Andrew Jackson (chosen President in 1828), two great parties were again formed (about 1830) which some few years later absorbed the minor groups. One of these two parties carried on, under the name of Democrats, the dogmas and traditions of the Jeffersonian Republicans. It was the defender of States' Rights and of a restrictive construction of the Constitution; it leant mainly on the South and the farming classes generally, and it was therefore inclined to free trade. The other section, which called itself at first the National Republican, ultimately the Whig party, represented many of the views of the former Federalists, such as their advocacy of a tariff for the protection of manufactures, and of the expenditure of public money on internal improvements. It was willing to increase the army and navy, and like the Federalists found its chief, though by no means its sole, support in the commercial and manufacturing parts of the country, that is to say, in New England and the middle States. Meantime a new question far more exciting, far more menacing, had arisen. In 1819, when Missouri applied to be admitted into the Union as a State, a sharp contest broke out in Congress as to whether slavery should be permitted within her limits, nearly all the Northern members voting against slavery, nearly all the Southern members for. The struggle might have threatened the stability of the Union but for the compromise adopted next year, which, while admitting slavery in Missouri, forbade it for the future north of lat. 36° 30′. The danger seemed to have passed, but in its very suddenness there had been something terrible. Jefferson, then over seventy, said that it startled him

"like a fire-bell in the night." After 1840 things grew more serious, for whereas up till that time new States had been admitted substantially in pairs, a slave State balancing a free State, it began to be clear that this must shortly cease, since the remaining territory out of which new States would be formed lay north of the line 36° 30′. As every State held two seats in the Senate, the then existing balance in that chamber between slave States and free States would evidently soon be overset by the admission of a larger number of the latter. The apprehension of this event, with its probable result of legislation unfriendly to slavery, stimulated the South to the annexation of Texas, and made them increasingly sensitive to the growth, slow as that growth was, of Abolitionist opinions at the North. The question of the extension of slavery west of the Missouri river had become by 1850 the vital and absorbing question for the people of the United States, and as in that year California, having organized herself without slavery, was knocking at the doors of Congress for admission as a State, it had become an urgent question which evoked the hottest passions, and the victors in which would be victors all along the line. But neither of the two great parties ventured to commit itself either way. The Southern Democrats hesitated to break with those Democrats of the Northern States who sought to restrict slavery. The Whigs of the North, fearing to alienate the South by any decided action against the growing pretensions of the slaveholders, temporized and suggested compromises which practically served the cause of slavery. They did not perceive that in trying to preserve their party they were losing hold of the people, alienating from themselves the men who cared for principle in politics, sinking into a mere organi-

zation without a faith worth fighting for. That this was so presently appeared. The Democratic party had by 1852 passed almost completely under the control of the slave-holders, and was adopting the dogma that Congress enjoyed under the Constitution no power to prohibit slavery in the territories. This dogma obviously overthrew as unconstitutional the Missouri compromise of 1820. The Whig leaders discredited themselves by Henry Clay's compromise scheme of 1850, which, while admitting California as a free State, appeased the South by the Fugitive Slave Law. They received a crushing defeat at the presidential election of 1852; and what remained of their party finally broke in pieces in 1854 over the bill for organizing Kansas as a territory in which the question of slaves or no slaves should be left to the people, a bill which of course repealed the Missouri compromise. Singularly enough, the two great orators of the party, Henry Clay and Daniel Webster, both died in 1852, wearied with strife and disappointed in their ambition of reaching the presidential chair. Together with Calhoun, who passed away two years earlier, they are the ornaments of this generation, not indeed rising to the stature of Washington or Hamilton, but more remarkable than any, save one, among the statesmen who have followed them.[1] With them ends the second period in the annals of American parties, which, extending from about 1820 to 1856, includes the rise and fall of the Whig party. Most of the controversies which filled it have become matter for history only. But three large results, besides the general democratization of politics, stand out. One is the detach-

[1] Powerful pictures of the political struggles of this time may be found in Mr. Schurz's *Life of Henry Clay*, and Dr. von Holst's *Life of John C. Calhoun*.

ment of the United States from the affairs of the Old World. Another is the growth of a sense of national life, especially in the Northern and Western States, along with the growth at the same time of a secessionist spirit among the slave-holders. And the third is the development of the complex machinery of party organization, with the adoption of the principle on which that machinery so largely rests, that public office is to be enjoyed only by the adherents of the President for the time being.

The Whig party having vanished, the Democrats seemed to be for the moment, as they had been once before, left in possession of the field. But this time a new antagonist was quick to appear. The growing boldness of the slave-owners had begun to alarm the Northern people when they were startled by the decision of the Supreme court, pronounced in the case of the slave Dred Scott, which laid down the doctrine that Congress had no power to forbid slavery anywhere, and that a slave-holder might carry his slaves with him where he pleased, seeing that they were mere objects of property, whose possession the Constitution guaranteed.[1] This hastened the formation out of the wrecks of the Whigs of a new party, which took in 1856 the name of Republican, while at the same time it threw an apple of discord among the Democrats. In 1860 the latter could not agree upon a candidate for President. The Southern wing pledged themselves to one man, the Northern wing to another; a body of hesitating and semi-detached politicians put forward a third. Thus the Republicans through the divisions of their opponents triumphed in the election of Abraham Lincoln, presently followed by the secession of eleven slave States.

[1] This broad doctrine was not necessary for the decision of the case, but delivered as an *obiter dictum* by the majority of the court.

The Republican party, which had started by denouncing the Dred Scott decision and proclaiming the right of Congress to restrict slavery, was of course throughout the Civil War the defender of the Union and the assertor of Federal authority, stretched, as was unavoidable, to lengths previously unheard of. When the war was over, there came the difficult task of reconstructing the now reconquered slave States, and of securing the position in them of the lately liberated negroes. The outrages perpetrated on the latter, and on white settlers in some parts of the South, required further exertions of Federal authority, and made the question of the limit of that authority still a practical one, for the old Democratic party, almost silenced during the war, had now reappeared in full force as the advocate of State rights, and the watchful critic of any undue stretches of Federal authority. It was found necessary to negative the Dred Scott decision and set at rest all questions relating to slavery and to the political equality of the races by the adoption of three important amendments to the Constitution. The troubles of the South by degrees settled down as the whites regained possession of the State governments and the Northern troops were withdrawn. In the presidential election of 1876 the war question and negro question had become dead issues, for it was plain that a large and increasing number of the voters were no longer, despite the appeals of the Republican leaders, seriously concerned about them.

This election marks the close of the third period, which embraces the rise and overwhelming predominance of the Republican party. Formed to resist the extension of slavery, led on to destroy it, compelled by circumstances to expand the central authority in a way unthought of before, that party had now worked out its

programme and fulfilled its original mission. The old aims were accomplished, but new ones had not yet been substituted, for though new problems had appeared, the party was not prepared with solutions. Similarly the Democratic party had discharged its mission in defending the rights of the reconstructed States, and criticizing excesses of executive power; similarly it too had refused to grapple either with the fresh questions which had begun to arise since the war, or with those older questions which had now reappeared above the subsiding flood of war days. The old parties still stood as organizations, and still claimed to be the exponents of principles. Their respective principles had, however, little direct application to the questions which confronted and divided the nation. A new era was opening which called either for the evolution of new parties, or for the transformation of the old ones by the adoption of tenets and the advocacy of views suited to the needs of the time. But this fourth period, which began with 1876, has not yet seen such a transformation, and we shall therefore find, when we come to examine the existing state of parties, that there is an unreality and lack of vital force in both Republicans and Democrats, powerful as their organizations are.

The foregoing sketch, given only for the sake of explaining the present condition of parties, suggests some observations on the foundations of party in America.

If we look over Europe we shall find that the grounds on which parties have been built and contests waged since the beginning of free governments have been in substance but few. In the hostility of rich and poor, or of capital and labour, in the fears of the Haves and the desire of the Have-nots, we perceive the most frequent ground, though it is often disguised as a dispute about

the extension of the suffrage or some other civic right. Questions relating to the tenure of land have played a large part; so have questions of religion; so too have animosities or jealousies of race; and of course the form of government, whether it shall be a monarchy or a republic, has sometimes been in dispute. None of these grounds of quarrel substantially affected American parties during the three periods we have been examining. No one has ever advocated monarchy, or a restricted suffrage, or a unified instead of a Federal republic. Nor down to 1876 was there ever any party which could promise more to the poor than its opponents. In 1852 the Know-nothing party came forward as the organ of native American opinion against recent immigrants, then chiefly the Irish, for German immigration was comparatively small in those days. But as this party failed to face the problem of slavery, and roused jealousy by its secret organization, it soon passed away. The complete equality of all sects, with the complete neutrality of the government in religious matters, has fortunately kept religious passion outside the sphere of politics.

Have the American parties then been formed only upon narrow and local bases, have they contended for transient objects, and can no deeper historical meaning, no longer historical continuity, be claimed for them?

Two permanent oppositions may, I think, be discerned running through the history of the parties, sometimes openly recognized, sometimes concealed by the urgency of a transitory question. One of these is the opposition between a centralized or unified and a federalized government. In every country there are centrifugal and centripetal forces at work, the one or the other of which is for the moment the stronger. There has seldom been a country in which something might

not have been gained, in the way of good administration and defensive strength, by a greater concentration of power in the hands of the central government, enabling it to do things which local bodies, or a more restricted central government, could not do equally cheaply or well. Against this gain there is always to be set the danger that such concentration may weaken the vitality of local communities and authorities, and may enable the central power to stunt their development. Sometimes needs of the former kind are more urgent, or the sentiment of the people tends to magnify them; sometimes again the centrifugal forces obtain the upper hand. English history shows several such alternations. But in America the Federal form of government has made this permanent and natural opposition specially conspicuous. The salient feature of the Constitution is the effort it makes to establish an equipoise between the force which would carry the planet States off into space and the force which would draw them into the sun of the National government. There have always therefore been minds inclined to take sides upon this fundamental question, and a party has always had something definite and weighty to appeal to when it claims to represent either the autonomy of communities on the one hand, or the majesty and beneficent activity of the National government on the other. The former has been the watchword of the Democratic party. The latter was seldom distinctly avowed, but was generally in fact represented by the Federalists of the first period, the Whigs of the second, the Republicans of the third.

The other opposition, though it goes deeper and is more pervasive, has been less clearly marked in America, and less consciously admitted by the Americans themselves. It is the opposition between the tendency which

makes some men prize the freedom of the individual as the first of social goods, and that which disposes others to insist on checking and regulating his impulses. The opposition of these two tendencies, the love of liberty and the love of order, is permanent and necessary, because it springs from differences in the intellect and feelings of men which one finds in all countries and at all epochs. There are always persons who are struck by the weakness of mankind, by their folly, their passion, their selfishness: and these persons, distrusting the action of average mankind, will always wish to see them guided by wise heads and restrained by strong hands. Such guidance seems the best means of progress, such restraint the only means of security. Those on the other hand who think better of human nature, and have more hope in their own tempers, hold the impulses of the average man to be generally towards justice and peace. They have faith in the power of reason to conquer ignorance, and of generosity to overbear selfishness. They are therefore disposed to leave the individual alone, and to entrust the masses with power. Every sensible man feels in himself the struggle between these two tendencies, and is on his guard not to yield wholly to either, because the one degenerates into tyranny, the other into an anarchy out of which tyranny will eventually spring. The wisest statesman is he who best holds the balance between them.

Each of these tendencies found among the fathers of the American Republic a brilliant and characteristic representative. Hamilton, who had a low opinion of mankind, but a gift and a passion for large constructive statesmanship, went so far in his advocacy of a strong government as to be suspected of wishing to establish a monarchy after the British pattern. He has

left on record his opinion that the free constitution of England, which he admired in spite of the faults he clearly saw, could not be worked without its corruptions.[1] Jefferson carried further than any other person set in an equally responsible place has ever done, his faith that government is either needless or an evil, and that with enough liberty, everything will go well. An insurrection every few years, he said, must be looked for, and even desired, to keep government in order. The Jeffersonian tendency has always remained, like a leaven, in the Democratic party, though in applying Jeffersonian doctrines the slave-holders stopped when they came to a black skin. Among the Federalists, and their successors the Whigs, and the more recent Republicans, there has never been wanting a full faith in the power of freedom. The Republicans gave a remarkable proof of it when they bestowed the suffrage on the negroes. Neither they nor any American party has ever professed itself the champion of authority and order; that would be a damaging profession. Nevertheless it is rather towards what I may perhaps venture to call the Federalist-Whig-Republican party than towards the Democrats that those who have valued the principle of authority have been generally drawn. It is for that party that the Puritan spirit, not extinct in America, has felt the greater affinity, for this spirit, having realized the sinfulness of human nature, is inclined to train and control the natural man by laws and force.

The tendency that makes for a strong government being akin to that which makes for a central govern-

[1] David Hume had made the same remark, natural at a time when the power of Parliament was little checked by responsibility to the people.

ment, the Federalist-Whig-Republican party, which has, through its long history, and under its varying forms and names, been the advocate of the national principle, found itself for this reason also led, more frequently than the Democrats, to exalt the rights and powers of government. It might be thought that the same cause would have made the Republican party take sides in that profound opposition which we perceive to-day in all civilized peoples, between the tendency to enlarge the sphere of legislation and State action, and the doctrine of *laissez faire*. So far, however, this has not happened. There is more in the character and temper of the Republicans than of the Democrats that leans towards State interference. But neither party has thought out the question; neither has shown any more definiteness of policy regarding it than the Tories and the Liberals have done in England.

American students of history may think that I have pressed the antithesis of liberty and authority, as well as that of centrifugal and centripetal tendencies, somewhat too far in making one party a representative of each through the first century of the Republic. I do not deny that at particular moments the party which was usually disposed towards a strong government resisted and decried authority, while the party which specially professed itself the advocate of liberty sought to make authority more stringent. Such deviations are however compatible with the general tendencies I have described. And no one who has gained even a slight knowledge of the history of the United States will fall into the error of supposing that order and authority mean there what they have meant in the monarchies of Continental Europe.

CHAPTER LIV

THE PARTIES OF TO-DAY

THERE are now two great and several minor parties in the United States. The great parties are the Republicans and the Democrats. What are their principles, their distinctive tenets, their tendencies? Which of them is for free trade, for civil service reform, for a spirited foreign policy, for the regulation of telegraphs by legislation, for a national bankrupt law, for changes in the currency, for any other of the twenty issues which one hears discussed in the country as seriously involving its welfare?

This is what a European is always asking of intelligent Republicans and intelligent Democrats. He is always asking because he never gets an answer. The replies leave him in deeper perplexity. After some months the truth begins to dawn upon him. Neither party has anything definite to say on these issues; neither party has any principles, any distinctive tenets. Both have traditions. Both claim to have tendencies. Both have certainly war cries, organizations, interests enlisted in their support. But those interests are in the main the interests of getting or keeping the patronage of the government. Tenets and policies, points of political doctrine and points of political practice,

have all but vanished. They have not been thrown away but have been stripped away by Time and the progress of events, fulfilling some policies, blotting out others. All has been lost, except office or the hope of it.

The phenomenon may be illustrated from the case of England, where party government has existed longer and in a more fully developed form than in any other part of the Old World.[1] The essence of the English parties has lain in the existence of two sets of views and tendencies which divide the nation into two sections, the party, let us say, though these general terms are not very safe, of movement and the party of standing still, the party of liberty and the party of order. Each section believes in its own views, and is influenced by its peculiar tendencies, recollections, mental associations, to deal in its own peculiar way with every new question as it comes up. The particular dogmas may change: doctrines once held by Whigs alone may now be held by Tories also; doctrines which Whigs would have rejected fifty years ago may now be part of the orthodox programme of the Liberal party. But the tendencies have been permanent and have always so worked upon the various fresh questions and problems which have presented themselves during the last two centuries, that each party has had not only a brilliant concrete life in its famous leaders and zealous members, but also an intellectual and moral life in its principles. These principles have meant something to those who held them, so that when a fresh question arose it was usually possible to predict how each party, how even the average members of each party, would regard and wish to deal

[1] English parties are however not very ancient; they date only from the struggle of the Stuart kings with the Puritan and popular party in the House of Commons, and did not take regular shape as Whigs and Tories till the reign of Charles II.

with it. Thus even when the leaders have been least worthy and their aims least pure, an English party has felt itself ennobled and inspirited by the sense that it had great objects to fight for, a history and traditions which imposed on it the duty of battling for its distinctive principles. It is because issues have never been lacking which brought these respective principles into operation, forcing the one party to maintain the cause of order and existing institutions, the other that of freedom and what was deemed progress, that the two English parties have not degenerated into mere factions. Their struggles for office have been redeemed from selfishness by the feeling that office was a means of giving practical effect to their doctrines.

But suppose that in Britain all the questions which divide Tories from Liberals were to be suddenly settled and done with. Britain would be in a difficulty. Her free government has so long been worked by the action and reaction of the ministerialists and the opposition that there would probably continue to be two parties. But they would not be really, in the true old sense of the term, Tories and Liberals; they would be merely Ins and Outs. Their combats would be waged hardly even in name for principles, but only for place. The government of the country, with the honour, power, and emoluments attached to it, would still remain as a prize to be contended for. The followers would still rally to the leaders; and friendship would still bind the members together into organized bodies; while dislike and suspicion would still rouse them against their former adversaries. Thus not only the leaders, who would have something tangible to gain, but even others who had only their feelings to gratify, would continue to form political clubs, register voters, deliver party

harangues, contest elections, just as they do now. The difference would be that each faction would no longer have broad principles—I will not say to invoke, for such principles would probably continue to be invoked as heretofore—but to insist on applying as distinctively its principles to the actual needs of the state. Hence quiet or fastidious men would not join in party struggles; while those who did join would no longer be stimulated by the sense that they were contending for something ideal. Loyalty to a leader whom it was sought to make prime minister would be a poor substitute for loyalty to a faith. If there were no conspicuous leader, attachment to the party would degenerate either into mere hatred of antagonists or into a struggle over places and salaries. And almost the same phenomena would be seen if, although the old issues had not been really determined, both the parties should have so far abandoned their former position that these issues did not divide them, but each professed principles which were, at least in their application, practicably undistinguishable.

This is what has happened with the American parties. The chief practical issues which once divided them have been settled. Some others have not been settled, but as regards these, one or other party has so departed from its former attitude that we cannot now speak of any conflict of principles.

When life leaves an organic body it becomes useless, fetid, pestiferous: it is fit to be cast out or buried from sight. What life is to an organism, principles are to a party. When they which are its soul have vanished, its body ought to dissolve, and the elements that formed it be regrouped in some new organism:

> "The times have been
> That when the brains were out the man would die."

But a party does not always thus die. It may hold together long after its moral life is extinct. Guelfs and Ghibelines warred in Italy for nearly two centuries after the Emperor had ceased to threaten the Pope, or the Pope to befriend the cities of Lombardy. Parties go on contending because their members have formed habits of joint action, and have contracted hatreds and prejudices, and also because the leaders find their advantage in using these habits and playing on these prejudices. The American parties now continue to exist, because they have existed. The mill has been constructed, and its machinery goes on turning, even when there is no grist to grind. But this is not wholly the fault of the men; for the system of government requires and implies parties, just as that of England does. These systems are made to be worked, and always have been worked, by a majority; a majority must be cohesive, gathered into a united and organized body: such a body is a party.

If you ask an ordinary Northern Democrat to characterize the two parties, he will tell you that the Republicans are corrupt and incapable, and will cite instances in which persons prominent in that party, or intimate friends of its leaders, have been concerned in frauds on the government or in disgraceful lobbying transactions in Congress. When you press him for some distinctive principles separating his own party from theirs, he will probably say that the Democrats are the protectors of States' rights and of local independence, and the Republicans hostile to both. If you go on to inquire what bearing this doctrine of States' rights has on any presently debated issue he will admit that, for the moment, it has none, but will insist that should any issue involving the rights of the States arise, his party will be, as always, the guardian of American freedom.

This is really all that can be predicated about the Democratic party. If a question involving the rights of a State against the Federal authority were to emerge, its instinct would lead it to array itself on the side of the State rather than of the central government, supposing that it had no direct motive to do the opposite. As it has at no point of time, from the outbreak of the war down to 1888, possessed a majority in both Houses of Congress as well as the President in power, its devotion to this principle has not been tested, and might not resist the temptation of any interest the other way. However, this is matter of speculation, for at present the States fear no infringement of their rights. So conversely of the Republicans. Their traditions ought to dispose them to support Federal power against the States, but their action in a concrete case would probably depend on whether their party was at the time in condition to use that power for its own purposes. If they were in a minority in Congress, they would be little inclined to strengthen Congress against the States. The simplest way of proving or illustrating this will be to run quickly through the questions of present practical interest.

That which most keenly interests the people, though of course not all the people, is the regulation or extinction of the liquor traffic. On this neither party has committed or will commit itself. The traditional dogmas of neither cover it, though the Democrats have been rather more disposed to leave men to themselves than the Republicans, and rather less amenable to the influence of ethical sentiment. Practically for both parties the point of consequence is what they can gain or lose. Each has clearly something to lose. The drinking part of the population is chiefly foreign. Now the Irish are mainly Democrats, so the Democratic party

dare not offend them. The Germans are mainly Republican, so the Republicans are equally bound over to caution. It is true that though the parties, as parties, are neutral, most Temperance men are, in the North and West,[1] Republicans, most whisky-men and saloon-keepers Democrats. The Republicans therefore more frequently attempt to conciliate the anti-liquor party by flattering phrases. They suffer by the starting of a Prohibitionist candidate, since he draws more voting strength away from them than he does from the Democrats.

Free Trade *v.* Protection is another burning question, and has been so since the early days of the Union. The old controversy as to the constitutional right of Congress to impose a tariff for any object but that of raising revenue, has been laid to rest, for whether the people in 1788 meant or did not mean to confer such a power, it has been exerted for so many years, and on so superb a scale, that no one now doubts its legality. Before the war the Democrats were advocates of a tariff for revenue only, *i.e.* of Free Trade. Most of them still clung to the doctrine, and have favoured a reduction of the present system of import duties. But the party trumpet has often given an uncertain sound, for Pennsylvania is Protectionist on account of its iron industries; northern Georgia and southern Tennessee are tending that way for the same reason; Louisiana is inclined to protection on account of its sugar. As it would never do to alienate the Democrats of three such

[1] The Southern negroes are generally supposed to be Republicans, but are generally opposed to restrictions on the sale of liquor. This was strikingly shown in the recent popular vote on the subject in Texas. On the other hand, the better class of Southern whites, who are of course Democrats, are largely Temperance men, and some States, *e.g.* Georgia, have adopted a local option system, under which each county decides whether it will be "wet" or "dry" (*e.g.* permit or forbid the sale of intoxicants). At present most of the counties of Georgia are "dry counties."

districts, the party has generally sought to remain unpledged, or, at least, in winking with one eye to the Free Traders of the North-west and South-east, it has been tempted to wink with the other to the iron men of Pittsburg and the sugar planters of New Orleans.[1] And though it has come to advocate more and more strongly a reduction of the present high tariff, it does this not so much on Free Trade principles, as on the ground that the present surplus must be got rid of. The Republicans are bolder, and pledge themselves, when they frame a platform, to maintain the protective tariff. But some of the keenest intellects in their ranks, including a few leading journalists, are strong for free trade and therefore sorely tempted to break with their party.

Civil service reform, whereof more hereafter, has for some time past received the lip service of both parties, a lip service expressed by both with equal warmth, and by the average professional politicians of both with equal insincerity. Such reforms as have been effected in the mode of filling up places, have been forced on the parties by public opinion, rather than carried through by either. None of the changes made—and they are perhaps the most beneficial of recent changes—has raised an issue between the parties, or given either of them a claim on the confidence of the country. The best men in both parties support the Civil Service Commission; the worst men in both would gladly get rid of it.

The advantages of regulating, by Federal legislation, railroads and telegraphic lines extending over a number of States, is a subject frequently discussed. Neither party has had anything distinctive to say upon it in the

[1] The Democratic party seems at this moment (1888) more inclined than at any previous moment since the war to "go solid," if not for Free Trade, yet for large reductions in the present protective tariff.

way either of advocacy or of condemnation. Both have asserted that it is the duty of railways to serve the people, and not to tyrannize over or defraud them, so the Inter-State Commerce Bill which has lately been passed with this view cannot be called a party measure. Finances have on the whole been well managed, and debt paid off with surprising speed. But there have been, and are still, serious problems raised by the condition of the currency. Both parties have made mistakes, and mistakes about equally culpable, for though the Republicans, having more frequently commanded a Congressional majority, have had superior opportunities for blundering, the Democrats have once or twice more definitely committed themselves to pernicious doctrines. Neither party now proposes a clear and definite policy.

It is the same as regards minor questions, such as women's suffrage or international copyright, or convict labour. Neither party has any distinctive attitude on these matters; neither is more likely, or less likely, than the other to pass a measure dealing with them. It is the same with regard to the doctrine of *laissez faire* as opposed to governmental interference. Neither Republicans nor Democrats can be said to be friends or foes of State interference: each will advocate it when there seems a practically useful object to be secured, or when the popular voice seems to call for it. It is the same with foreign policy. Both parties are practically agreed not only as to the general principles which ought to rule the conduct of the country, but as to the application of these principles. The party which opposes the President may at any given moment seek to damage him by defeating some particular proposal he has made, but this it will do as a piece of temporary strategy, not in pursuance of any settled doctrine.

Yet one cannot say that there is to-day no difference between the two great parties. There is a difference of spirit or sentiment perceptible even by a stranger when, after having mixed for some time with members of the one he begins to mix with those of the other, and doubtless much more patent to a native American. It resembles (though it is less marked than) the difference of tone and temper between Tories and Liberals in England. The intellectual view of a Democrat of the better sort is not quite the same as that of his Republican compeer, neither is his ethical standard. Each of course thinks meanly of the other; but while the Democrat thinks the Republican "dangerous" (*i.e.* likely to undermine the Constitution) the Republican is more apt to think the Democrat vicious and unscrupulous. So in England your Liberal fastens on stupidity as the characteristic fault of the Tory, while the Tory suspects the morals and religion more than he despises the intelligence of the Radical.

It cannot be charged on the American parties that they have drawn towards one another by forsaking their old principles. It is time that has changed the circumstances of the country, and made those old principles inapplicable. They would seem to have erred rather by clinging too long to outworn issues, and by neglecting to discover and work out new principles capable of solving the problems which now perplex the country. In a country so full of change and movement as America new questions are always coming up, and must be answered. New troubles surround a government, and a way must be found to escape from them; new diseases attack the nation, and have to be cured. The duty of a great party is to face these, to find answers and remedies, applying to the facts of the hour

the doctrines it has lived by, so far as they are still applicable, and when they have ceased to be applicable, thinking out new doctrines conformable to the main principles and tendencies which it represents. This is a work to be accomplished by its ruling minds, while the habit of party loyalty to the leaders powerfully serves to diffuse through the mass of followers the conclusions of the leaders and the reasonings they have employed.

"But," the European reader may ask, "is it not the interest as well as the duty of a party thus to adapt itself to new conditions? Does it not, in failing to do so, condemn itself to sterility and impotence, ultimately, indeed, to supersession by some new party which the needs of the time have created?"

This is what happens in England and in Europe generally. Probably it will happen in the long run in America also, unless the parties adapt themselves to the new issues, just as the Whig party fell in 1852-57 because it failed to face the problem of slavery. That it happens more slowly may be ascribed partly to the completeness and strength of the party organizations, which make the enthusiasm generated by ideas less necessary, partly to the fact that the questions on which the two great parties still hesitate to take sides are not presently vital to the well-being of the country, partly also to the smaller influence in America than in Europe of individual leaders. English parties, which hesitate long over secondary questions, might hesitate longer than is now their practice over vital ones also, were they not accustomed to look for guidance to their chiefs, and to defer to the opinion which the chiefs deliver. And it is only by courage and the capacity for initiative that the chiefs themselves retain their position.

CHAPTER LV

COMPOSITION OF THE PARTIES

THE less there is in the tenets of the Republicans and Democrats to make their character intelligible to a European reader, so much the more desirable is it to convey some idea of what may be called their social and local, their racial and ecclesiastical complexions.

The Republican party was formed between 1854 and 1856 chiefly out of the wrecks of the Whig party, with the addition of the Abolitionists and Free Soilers, who, disgusted at the apparent subservience to the South of the leading northern Whigs, had for some time previously acted as a group by themselves, though some of them had been apt to vote for Whig candidates. They had also recruits from the Free Soil Democrats, who had severed themselves from the bulk of the Democratic party, and some of whom claimed to be true Jeffersonians in joining the party which stood up against the spread of slavery.[1] The Republicans were therefore from the first a Northern party, more distinctly so than the Federalists had been at the close of the preceding century, and much more distinctly so than the

[1] The name Republican was given to the new party, not without the hope of thereby making it easier for these old school Democrats to join it, for in Jefferson's day his party had been called Republican.

Whigs, in whom there had been a pretty strong Southern element.

The Whig element brought to the new party solidity, political experience, and a large number of wealthy and influential adherents. The Abolitionist element gave it force and enthusiasm, qualities invaluable for the crisis which came in 1861 with the secession of all save four of the slave-holding States. During the war, it drew to itself nearly all the earnestness, patriotism, religious and moral fervour, which the North and West contained. It is still, in those regions, the party in whose ranks respectable, steady, pious, well-conducted men are to be looked for. If you find yourself dining with one of "the best people" in any New England city, or in Philadelphia, or in Cincinnati, Cleveland, Chicago, or Minneapolis, you assume that the guest sitting next you is a Republican, almost as confidently as in English county society you would assume your neighbour to be a Tory; that is to say, you may sometimes be wrong, but in four cases out of five you will be right. In New York the presumption is weaker, though even there you will be right three times out of five. One may say that all over the North, the merchants, manufacturers, and professional men of the smaller perhaps even more than of the larger towns, tend to be Republicans. So too are the farmers, particularly in the North-west, in Illinois, Wisconsin, Michigan, Minnesota, Iowa. The working class in the cities is divided, but the more solid part of it, the church-goers and total abstainers, are generally Republicans. A number, still large, though of course daily diminishing, are soldiers of the Civil War; and these naturally rally to the old flag. When turning southwards one reaches the borders of the old slave States,

everything is changed. In Baltimore the best people are so generally Democrats that when you meet a Republican in society you ask whether he is not an immigrant from New England. In Virginia, or the Carolinas, or the Gulf States, very few men of good standing belong to the Republican party, which consists of the lately enfranchised negroes, of a certain number of whites, seldom well regarded, who organize and use the negro vote, and who some twenty years ago were making a good thing for themselves out of it; of Federal officials, who have been put into Federal places by their friends at Washington, on the understanding that they are to work for the party, and of a certain number of stray people, perhaps settlers from the North, who have not yet renounced their former affiliations. It is not easy for an educated man to remain a Republican in the South, not only because the people he meets in society are Democrats, but because the Republican party managers are apt to be black sheep.

In the Middle States, New York, New Jersey, Pennsylvania, to which one may for this purpose add Ohio and Indiana, and on the Pacific slope, the parties are nearly balanced, and the majority of votes sways now this way now that, as the circumstances of the hour, or local causes, or the merits of individual candidates, may affect the popular mind. Pennsylvania, for instance, is now, as she has been since 1860, a Republican State, owing to her interest in a protective tariff. New York, whose legislature is usually Republican, in presidential elections generally goes Democratic. In these doubtful States, the better sort of people are mostly Republicans. It is in that party you look to find the greater number of the philanthropists, the men of culture, the men of substance who desire to see things go on quietly, with no

shocks given to business confidence by rash legislation. These are great elements of strength. They have been gained for the Republican party by its earlier history, which drew into it thirty years ago those patriotic and earnest young men who are now the leading elderly men in their respective neighbourhoods. But against them must be set the tendency of a section of the Republican party, a section which includes many men of high intelligence, to break away, or, as it is called, "bolt" from the party platform and "ticket." This section explains its conduct by declaring that the great claims which the party gained on the confidence of the country by its resistance to slavery and its vigorous prosecution of the war have been forfeited by maladministration since the war ended, and by the scandals which have gathered round some of its conspicuous figures. If intelligence and cultivation dispose their possessors to desert at a critical moment, the party might be stronger without this element, for, as everybody knows, a good party man is he who stands by his friends when they are wrong.

The Democratic party suffers in the North and West from exactly the opposite causes to the Republican. It was long discredited by its sympathy with the South, and by the opposition of a considerable section within it (the so-called Copperheads) to the prosecution of the war. This shadow hung heavy over it till the complete pacification of the South and growing prominence of new questions began to call men's minds away from the war years. From 1869 to 1885 it profited from being in opposition. Saved from the opportunity of abusing patronage, or becoming complicated in administration jobs, it has been able to criticize freely the blunders or vices of its opponents. It may however be doubted whether its party managers have been, take them all in

all, either wiser or purer than those whom they criticized, nor do they seem to have inspired any deeper trust in the minds of impartial citizens. When, as has several times happened, the Democrats have obtained a majority in the House of Representatives, their legislation has not been higher in aim or more judicious in the choice of means than that which Republican congresses have produced. Hence the tendency to desert from the Republican ranks has enured to the benefit of the Democrats less than might have been expected. However, the Democratic party includes not only nearly all the talent education and wealth of the South, together with the bulk of the Southern farmers and poor whites, but also a respectable minority of good men in the Middle States, and a somewhat smaller minority in New England and the North-west.

In these last-mentioned districts its strength lies chiefly in the cities, a curious contrast to those earlier days when Jefferson was supported by the farmers and Hamilton by the townsfolk.[1] But the large cities have now a population unlike anything that existed eighty years ago, a vast ignorant fluctuating mass of people, many of them only recently admitted to citizenship, who have little reason for belonging to one party rather than another, but are attracted some by the name of the Democratic party, some by the fact that it is not the party of the well-to-do, some by the leaders belonging to their own races who have risen to influence in its ranks. The adhesion of this mob gives the party a slight flavour of rowdyism, as its old associations give it, to a Puritan

[1] Jefferson regarded agriculture as so much the best occupation for citizens that he was alarmed by the rumour that the codfish of the North-eastern coasts were coming down to the shores of Virginia and Carolina, lest the people of those States should "be tempted to catch them, and commerce, of which we have already too much, receive an accession."

palate, a slight flavour of irreligion. Twenty years ago, a New England deacon—the deacon is in America the type of solid respectability—would have found it as hard to vote for a Democratic candidate as an English archdeacon to vote for a Birmingham Radical. But these old feelings have begun to wear away. A new generation of voters has arisen which never saw slavery, and which cares little about Jefferson for good or for evil. This generation takes parties as it finds them. Even among the older voters there has been a sensible change within the last three years. Many of the best Republicans, who remembered the Democrats as the party of which a strong section sympathized with the slaveholders before the war, and disapproved of the war while it was being waged, looked with horror on the advent to power of a Democratic president. The country, however, has not been ruined by Mr. Cleveland, but on the contrary goes on much as before, its elements of good and evil mixed and contending, just as under Republican administrations. However, the Republican leaders still point to the fact that the Democrats command the solid vote of all the States where slavery formerly existed as a reason why it should excite the distrust of good citizens who fought for the Union.

Now that differences of political doctrine are not accentuated, race differences play a considerable part in the composition of the parties. Besides the native Americans, there are men of five nationalities in the United States—British, Irish, Germans, Scandinavians, French Canadians.[1] Of these, however, the English and Scotch lose their identity almost immediately,

[1] There are also Poles, Czechs, and Italians; but their number, except in two or three of the Atlantic cities, to which I may perhaps add Chicago, Milwaukee, and the mining regions of Pennsylvania, is relatively small, though increasing more rapidly of late years.

being absorbed into the general mass of native citizens. Though very numerous, they have hitherto counted for nothing politically, because English immigrants have either been indifferent to political struggles or have voted from the same motives as an average American. They have to a large extent remained British subjects, not caring for the suffrage. But quite recently an effort has been made (apparently chiefly for the sake of counter-working the Irish) to induce them to apply for citizenship and exert their voting power as a united body. It may be doubted whether they will become citizens to any great extent, or whether, if they do, they will cast a solid vote.

Far otherwise with the Irish. They retain their national spirit and disposition to act together into the second, rarely however into the third, generation; they are a factor potent in Federal and still more potent in city politics. Now the Irish have hitherto been nearly all Democrats. When the great exodus from Ireland began in 1846-50,[1] the first-comers joined the Democratic party, probably because it was less Protestant in sentiment than the Whig party, and was already dominant in the city of New York, where the Irish first became a power in politics. The aversion to the negro which they soon developed, made them, when the Republican party arose, its natural enemies, for the Republicans were, both during and after the war, the negro's patrons. Before the war ended the Irish vote had come to form a large part of the Democratic strength, and Irishmen were prominent among the politicians of that party: hence new-comers from

[1] There had been considerable immigration from Ireland before the great famine of 1846-47, but that is the date when it swelled to vast proportions.

Ireland have generally enlisted under its banner. To-day, however, there are plenty of Irishmen, and indeed of Irish leaders and bosses, among the Republicans of the great cities; and statesmen of that party often seek to "placate" and attract the Irish vote in ways too familiar to need description.

The German immigration, excluding of course the early German settlements in Pennsylvania, began rather later than the Irish; and as there is some jealousy between the two races, the fact that the Irish were already Democrats when the Germans arrived, may be one reason why the latter have been more inclined to enrol themselves as Republicans. The Germans usually become farmers in the Middle and Western States, where, finding the native farmers mainly Republicans, they imitate the politics of their neighbours. That there are many German Democrats in the great cities may be ascribed to the rather less friendly attitude of the Republicans to the liquor traffic, for the German colonist is faithful to the beer of his fatherland, and, in the case of the Roman Catholic Germans, to the tacit alliance which has subsisted in many districts between the Catholic Church and the Democrats. The Germans are a cohesive race, keeping up national sentiment by festivals, gymnastic societies, processions, and national songs, but as they take much less keenly to politics, and are not kept together by priests, their cohesion is more short-lived than that of the Irish. The American-born son of a German is already completely an American in feeling as well as in practical aptitude. The German vote over the whole Union may be roughly estimated as three-fifths Republican, two-fifths Democratic.

The Scandinavians—Swedes and Norwegians, with a few Danes and a handful of Icelanders—now form a

respectable element among the farmers of the Upper Mississippi States, particularly Wisconsin and Minnesota. So far as can be judged from the short experience the country has of them, for it is only some twenty-five years since their immigration began, they Americanize even more readily than their Teutonic cousins from the southern side of the Baltic. However, both Swedes and Norwegians are still so far clannish that in these States both parties find it worth while to run for office now and then a candidate of one or other, or candidates of both of these nationalities, in order to catch the votes of his or their compatriots.[1] Nine-tenths of them are Republicans. Like the Germans, they come knowing nothing of American politics, but the watchful energy of the native party-workers enlists them under a party banner as soon as they are admitted to civic rights. They make perhaps the best material for sober and industrious agriculturists that America receives, being even readier than the Germans to face hardship, and more content to dispense with alcoholic drinks.

The French Canadians are numerous in New England, and in one or two other Northern States, yet not numerous enough to tell upon politics, especially as they frequently remain British subjects. Their religion disposes those who become citizens to side with the Democratic party, but they do not constitute what is called "a vote."

The negroes in the Northern, Middle, and Pacific States are an element too small to be of much importance as voters. Gratitude for the favour shown to their race has kept them mostly but not exclusively Republicans.

[1] One is told that there is some little jealousy between Swedes and Norwegians, so that where they are equally strong it is not safe to put forward a candidate of either race without placing on the same ticket a candidate of the other also.

They are seldom admitted to a leading place in party organizations, but it is found expedient in presidential contests to organize a "coloured club" to work for the candidate among the coloured population of a town. In the South, and more particularly in South Carolina, Louisiana, and Mississippi, their mere numbers would enable them, were they equal to the whites in intelligence, wealth, and organization, to carry not merely congressional seats, but even in some States to determine a presidential election. But in these three respects they are unspeakably inferior. At first, under the leadership of some white adventurers, mostly of the "carpet-bagger" class, they went almost solid for the Republican party; and occasionally, even since the withdrawal of Federal troops, they have turned the balance in its favour. Now, however, the Democrats have completely gained the upper hand; and the negroes, perhaps losing faith in their former bosses, perhaps discouraged by seeing themselves unfit to cope with a superior race, perhaps less interested than at first in their new privileges, have begun to lose their solidarity. A certain number now vote with the Democrats. The force and fraud which the whites have used cannot be justified; but he who has travelled in the South and seen the ignorance of the negroes and the turpitude of the carpet-baggers whose profession it was to lead and "run" them, will admit some force in the excuses which the Southern Democrats give for their manipulation of election machinery.[1]

Religion comes very little into American party. Roman Catholics are usually Democrats, because, except in Maryland, which is Democratic anyhow, they are mainly Irish. Congregationalists and Unitarians,

[1] See further on this point, Chapter LXXXII. in Vol. III.

being presumably sprung from New England, are apt to be Republicans. Presbyterians, Methodists, Baptists, Episcopalians, have no special party affinities. They are mostly Republicans in the Northern States, Democrats in the South. The Mormons fight for their own hand, and in the two Territories which they inhabit,[1] have been wont to cast their votes, under the direction of their hierarchy, for the local party which promised to interfere least with them.

From what has been said it will be perceived that the distribution of parties is to some extent geographical. While the South casts a solid Democratic vote, the strength of the Republicans lies in the North-east and North-west; and the intermediate position of the Middle States corresponds to their divided political tendencies. The reason is that in America colonization has gone on along parallels of latitude. The tendencies of New England reappear in Northern Ohio, Northern Illinois, Michigan, Wisconsin, Minnesota, giving the Republicans a predominance in this vast and swiftly-growing Western population, which it takes the whole weight of the solid South to balance. This geographical opposition does not, however, betoken a danger of political severance. The material interests of the agriculturists of the North-west are not different from those of the South: free trade, for instance, will make as much and no more difference to the wheat-grower of Illinois as to the cotton-grower of Texas, to the iron-workers of Tennessee as to the iron-workers of Pennsylvania. And the existence of an active Democratic party in the North prevents the victory of either geographical section from being felt as a defeat by the other.

This is an important security against disruption.

[1] Utah and Idaho. There are also a few in Arizona.

And a similar security against the risk of civil strife or revolution is to be found in the fact, already explained, that the American parties are not based on or sensibly affected by differences either of wealth or of social position. Their cleavage is not horizontal according to social strata, but vertical. This would be less true if it were stated either of the Northern States separately, or of the Southern States separately: it is true of the Union taken as a whole. It might cease to be true if the new labour party were to grow till it absorbed or superseded either of the existing parties. The same feature has characterized English politics as compared with those of most European countries, and has been a main cause of the stability of the English government and of the good feeling between different classes in the community.[1]

[1] At the present moment the vast majority of the rich, a proportion probably larger than at any previous time, at any rate since 1827, belong in England to one of the two historic parties. But this phenomenon may possibly pass away.

CHAPTER LVI

FURTHER OBSERVATIONS ON THE PARTIES

BESIDES the two great parties which have divided America for thirty years, there are two or three lesser organizations or factions needing a word of mention. Sixty years ago there was a period when one of the two great parties having melted away, the other had become split up into minor sections.[1] Parties were numerous and unstable, new ones forming, and after a short career uniting with some other, or vanishing altogether from the scene. This was a phenomenon peculiar to that time, and ceased with the building up about 1832 of the Whig party, which lasted till shortly before the Civil War. But De Tocqueville, who visited America in 1831-32, took it for the normal state of a democratic community, and founded upon it some bold generalizations. A stranger who sees how few principles now exist to hold each of the two great modern parties together will be rather surprised that they have not shown more tendency to split up into minor groups and factions.

What constitutes a party? In America there is a simple test. Any section of men who nominate candidates of their own for the presidency and vice-presidency

[1] The same phenomenon reappeared at the break-up of the Whigs between 1852 and 1857, and from much the same cause.

ditions can be mended and this result attained. Speaking generally, the reforms advocated by the leaders of the Labour party include the "nationalization of the land," the imposition of a progressive income tax,[1] the taking over of railroads and telegraphs by the National government, the prevention of the immigration of Chinese and of any other foreign labourers who may come under contract, the restriction of all so-called monopolies, the forfeiture (where legally possible) of railroad land grants, the increase of the currency, the free issue of inconvertible paper, and, above all, the statutory restriction of hours of labour. But it must not be supposed that all the leaders adopt all these tenets; and the party is still too young to make it easy to say who are to be deemed its leaders. It shows a tendency to split up into factions. Its strength has lain in the trade unions of the operative class, and particularly in the enormous organization or league of trade unions known as the Knights of Labour: and it is therefore warmly interested in the administration of the various State laws which affect strikes and the practice of boycotting by which strikes often seek to prevail. Besides the enrolled Knights, whose political strength seems to be less feared now than it was a year or two ago, it has much support from the recent immigrants who fill the great cities, especially the Germans, Poles, and Czechs.

The Labour party has never yet run a presidential candidate, unless we are to consider General B. F. Butler, who was nominated in 1884 by the Greenbackers and Anti-monopolists, as having been practically its

[1] This was demanded by the Greenback national convention in its platform of 1880, and again in 1884; but one hears very little about it in America. Its recent adoption in the Canton of Vaud in Switzerland had the effect of causing some of the wealthier inhabitants to quit the canton.

standard-bearer. But it puts forward candidates in State and city elections when it sees a chance. It ran Mr. Henry George for Mayor of New York City in 1886, and obtained the unexpected success of polling 67,000 votes against 90,000 given to the regular Democratic, and 60,000 to the regular Republican candidate;[1] but this success was not sustained in the contest for the Governorship of the State of New York in 1887, when a vote of only 37,000 was cast by the Labour party in the city. At present it is a somewhat incalculable force in politics, nowhere strong enough to carry its own candidates, but sometimes strong enough to defeat one of the regular parties by drawing away a part of its voters, or to extort a share of the offices for some of its nominees. It is only in some States, chiefly Northern States, that Labour candidates are run at all.

The Prohibitionists, or opponents of the sale of intoxicating liquors, held in 1872, 1876, 1880, and 1884 a national convention for the nomination of a presidential candidate, and put out a ticket, *i.e.* nominated candidates for president and vice-president. The action of this party has been most frequent in the State legislatures, because the whole question of permitting, restricting, or abolishing the sale of intoxicants is a matter for the States and not for Congress. However, the Federal government raises a large revenue by its high import duty on wines, spirits, and malt liquors, and also levies an internal excise. As this revenue is no longer needed for the expenses of the national government, it has been proposed to distribute it among the States, or apply it to some new and useful purpose, or to reduce both customs duties and the excise. The fear of the first or

[1] In 1874 when a Labour candidate was first run for the New York mayoralty he obtained only between 3000 and 4000 votes.

second of these courses, which would give the manufacture and sale of intoxicants a new lease of life, or of the third, which would greatly increase their consumption, has induced the Prohibitionists to enter the arena of national politics; and they further justify their conduct in doing so by proposing to amend the Federal Constitution for the purposes of prohibition, and to stop the sale of intoxicants in the Territories and in the District of Columbia, which are under the direct control of Congress.[1] Their running a candidate for the Presidency is more a demonstration than anything else, as they have a comparatively weak vote to cast, many even of those who sympathize with them preferring to support one or other of the great parties rather than throw away a vote in the abstract assertion of a principle. One ought indeed to distinguish between the Prohibitionists proper, who wish to stop the sale of intoxicants altogether, and the Temperance men, who are very numerous among Republicans in the North and Democrats in the South, and who, while ready to vote for Local Option and a High Licence Law, disapprove the attempt to impose absolute prohibition by general legislation.[2] The number of persons who are thorough-

[1] The Prohibitionist platform of 1884, issued by their national convention, contained the following passage :—

"Congress should exercise its undoubted power and prohibit the manufacture and sale of intoxicating beverages in the District of Columbia, in the Territories of the United States, and in all places over which the Government has exclusive jurisdiction; that hereafter no State shall be admitted to the Union until its Constitution shall expressly prohibit polygamy and the manufacture and sale of intoxicating beverages."

One might have expected the Prohibitionists to advocate the repeal of the protective tariff on manufactured goods so as to make it necessary to maintain customs duties and an excise on intoxicants for the purposes of the national government. But this would imply that these beverages might still be consumed, which is just what the more ardent spirits in the temperance party refuse to contemplate.

[2] Some State legislatures have "placated" the Temperance men by

going Prohibitionists and pure Prohibitionists, that is to say, who are not also Republicans or Democrats, is small, far too small, even when reinforced by a section of the "Temperance men," and by discontented Republicans or Democrats who may dislike the "regular" candidates of their party, to give the Prohibition ticket a chance of success in any State. The importance of the ticket lies in the fact that in a doubtful State it may draw away enough votes from one of the "regular" candidates to leave him in a minority. Mr. Blaine probably suffered in this way in the election of 1884, most of the votes cast for the Prohibitionist candidate having come from quondam Republicans. On the other hand, a case may be imagined in which the existence of an outlet or safety-valve, such as a Prohibitionist ticket, would prevent the "bolters" from one party from taking the more dangerous course of voting for the candidate of the opposite party.[1]

The strength of the Prohibitionist party lies in the religious and moral earnestness which animates it and makes it for many purposes the successor and representative of the Abolitionists of forty years ago. Clergymen are prominent in its conventions, and women take an active part in its work. Partly from its traditions and temper, partly because it believes that women would be on its side in elections, it advocates the extension to them of the electoral franchise.

The Women's Suffrage party is perhaps hardly to be reckoned a party, firstly, because it consists chiefly of women who have no vote in elections; secondly, because

enacting that "the hygienics of alcohol and its action upon the human body" shall be a regular subject of instruction in the public schools.

[1] The Prohibitionists have, as I write, put out a presidential ticket for the election of 1888. Their Convention is said to have been attended by a good many persons desiring to form a new Third Party, of which the regulation of the liquor traffic should not be the only basis.

it does not run a presidential candidate. In 1884 it nominated a woman as candidate, but she did not go to the poll. It includes, however, a few persons who profess indifference to other political questions and agitate for this cause alone. It has hitherto failed to get the franchise extended to women in any one of the thirty-eight States, although this has been done in the Territories of Wyoming, Utah, and Washington, with what results for good or evil is much disputed.[1]

The European reader may perhaps wish to hear something as to the new group which goes by the name of Mugwumps.[2] At the presidential election of 1884 a section of the Republican party, more important by the intelligence and social position of the men who composed it than by its numbers, "bolted" (to use the technical term) from their party, and refused to vote for Mr. Blaine. Some simply abstained, some, obeying the impulse to vote which is strong in good citizens in America, voted for Mr. St. John, the Prohibitionist candidate, though well aware that this was practically the same thing as abstention. The majority, however, voted against their party for Mr. Cleveland, the Democratic candidate; and it seems to have been the transference of their vote which turned the balance in New York State, and thereby determined the issue of the whole election in Mr. Cleveland's favour. They are therefore not to be reckoned as a national party, according to the American use of the term, because they do not run a ticket of their own, but vote for a candidate started

[1] See further as to women's suffrage, chapter in Vol. III. *post*.

[2] The name is said to be formed from an Indian word denoting a chief or aged wise man, and was applied by the "straight-out" Republicans to their bolting brethren as a term of ridicule. It has now been taken up by the latter as a term of compliment; though the description they used formally in 1884 was that of "Independent Republicans."

by one of the regular parties. The only organization they formed consisted of committees which held meetings and distributed literature during the election, but dissolved when it was over. They maintain no permanent party machinery; and it seems probable that they will not act as a distinct section, even for the purposes of agitation, at the presidential election of 1888.[1]

The Mugwumps bear no more resemblance to any English party than does any other of the parties of the United States, for the chief doctrine they advocate is one not in controversy in England, the necessity of reforming the civil service by making appointments without reference to party, and a general reform in the methods of politics by selecting men for Federal, State, and municipal offices, with reference rather to personal fitness than to political affiliations. They are most numerous in New England and in the cities of the eastern States generally, but some few are scattered here and there all over the North and West as far as California. It is, however, only in New York, Massachusetts, and Connecticut that they seem to have constituted an appreciably potent vote. In the South there were none, because the Southern men who would, had they lived in the North, have taken to Mugwumpism, are in the South Democrats, and therefore voted for Mr. Cleveland anyhow. Nor does there seem to be in the Democratic party, either in North or South, as much material for a secession similar to that of the "bolters" of 1884 as was then shown to exist among the Republicans.

The reader must be reminded of one capital difference between the Republican and Democratic parties

[1] Since the above was put in type, I am informed that it has become clear that they will not act as a distinct section in the campaign of 1888.

and the minor ones which have just been mentioned. The two former are absolutely co-extensive with the Union. They exist in every State, and in every corner of every State. They exist even in the eight Territories, though the inhabitants of Territories have no vote in Federal elections. But the Labour party and the Prohibition party, although each maintains a more or less permanent organization in many States, do not attempt to do so in all States,[1] much less to fight all the elections in those States. Where they are strong, or where some question has arisen which keenly interests them, they will run their man for State governor, or mayor, or will put out a ticket for State senators or Assembly men: or they will take the often more profitable course of fusing for the nonce with one of the regular parties, giving it their vote in return for having the party nominations to one or more of the elective offices assigned to their own nominee.[2] This helps to keep the party going, and gives to its vote a practical result otherwise unattainable.

Is there not then, some European may ask, a Free Trade party? Not in the American sense of the word. Free trade doctrines are professed by most Democrats, especially in the South and West, though rather in the practical form of the advocacy of a reduced tariff than in that of the general doctrine as it was preached by Cobden, and by some few Republicans whose importance is due not to their numbers, but to the influence they exert as writers or teachers. There is a society which seeks to educate opinion by publishing books and

[1] In the election of 1880, votes were given for the Greenback candidate in all the States but three (308,578 votes in all), and for the Prohibitionist in seventeen States out of the thirty-eight (10,305 votes in all). In 1884, votes were given for the Greenback candidate in 29 States (175,370 in all), and for the Prohibitionist in 33 States (150,369 in all).

[2] The Greenbackers or Labour men seem to do this pretty frequently, the Prohibitionists, I fancy, much more rarely.

pamphlets on the subject; but it is no more a political force than the similar society in France, or the Cobden Club in England. There is no political organization which agitates for free trade by the usual party methods, much less does any one think of starting candidates either for the Presidency or for Congress upon a pure anti-protectionist platform,[1] although the election of 1888 may probably turn upon this particular issue.

Why, considering the reluctant hesitancy of the old parties in dealing with new questions, and considering also that in the immense area of the United States, with its endless variety of economic interests and social conditions, we might expect local diversities of aim and view which would crystallize, and so give rise to many local parties—why are not the parties far more numerous? Why, too, are the parties so persistent? In this changeful country one would look for frequent changes in tenets and methods.

One reason is, that there is at present a strong feeling in America against any sentiment or organization which relies on or appeals to one particular region of the country. Such localism or sectionalism is hateful, because, recalling the disunionist spirit of the South which led to the war, it seems anti-national and unpatriotic. By the mere fact of its springing from a local root, and urging a local interest, a party would set all the rest of the country against it. As a separately organized faction seeking to capture the Federal government, it could not succeed against the national parties, because the Union as a whole is so vast that it would be outvoted by one or other of them. But if it is content

[1] It would of course be absurd to run candidates for State office or municipal office on such a platform, inasmuch as the tariff is a matter purely for the national legislature.

to remain a mere opinion or demand, not attacking either national party, but willing to bestow the votes it can control on whichever will meet its wishes, it is powerful, because the two great parties will bid against one another for its support by flatteries and concessions. For instance, the question which interests the masses on the Pacific coast is that of excluding Chinese immigrants, because they compete for work with the whites and bring down wages. Now if the "anti-Mongolians" of California Nevada and Oregon were to create a national party, based on this particular issue, they would be insignificant, for they would have little support over five-sixths of the Union. But by showing that the attitude of the two great parties on this issue will determine their own attitude towards these parties, they control both, for as each desires to secure the vote of California, Nevada, and Oregon, each vies with the other in promising and voting for anti-Chinese legislation. The position of the Irish extremists is similar, except of course that they are a racial and not a geographical "section." Their power, which Congress has sometimes recognized in a way scarcely compatible with its dignity or with international courtesy, lies in the fact that as the Republicans and Democrats are nearly balanced, the congressional leaders of both desire to "placate" this faction, for which neither has a sincere affection. An Irish party, or a German party, or a Roman Catholic party, which should run its candidates on a sectional platform, would stand self-condemned in American eyes as not being genuinely American. But so long as it is content to seek control over parties and candidates, it exerts an influence out of proportion to its numbers, and checked only by the fear that if it demanded too much native Americans might rebel, as they did in the famous Know-Nothing or

"American" party of 1852-60. The same fate would befall a party based upon some trade interest, such as protection to manufactures, or the stimulation of cattle-breeding, or on the defence of the claims of the New England fishermen. Such a party might succeed for a time in a State, and might dictate its terms to one or both of the national parties; but when it attempted to be a national party it would become ridiculous and fall.

A second cause of the phenomenon which I am endeavouring to explain may be found in the enormous trouble and expense required to found a new national party. To influence the votes, even to reach the ears of a population of sixty millions of people, is an undertaking to be entered on only when some really great cause fires the national imagination, disposes the people to listen, persuades the wealthy to spend freely of their substance. It took six years of intense work to build up the Republican party, which might not even then have triumphed in the election of 1860, but for the split in the ranks of its opponents. The attempt made in 1872 to form a new independent party out of the discontented Republicans and the Democrats failed lamentably. The Independent Republicans of 1884 did not venture to start a programme or candidate of their own, but were prudently satisfied with helping the Democratic candidate, whom they deemed more likely than the nominee of the Republican party convention to give effect to the doctrine of civil service reform which they advocate.

The case of these Independents, or Mugwumps, is an illustrative one. For many years past there have been complaints that the two old parties were failing to deal with issues now of capital importance, such as the tariff, the currency, the improvements of methods of business in

Congress, the purification of the civil service, and extinction of the so-called Spoils system. These complaints, however, have not come from the men prominent as practical statesmen or politicians in the parties, but from outsiders, and largely from the men of intellectual cultivation and comparatively high social standing. Very few of these men take an active part in "politics," however interested they may be in public affairs. They are amateurs as regards the practical work of "running" ward meetings and conventions, of framing "tickets," and bringing up voters to the poll, in fact of working as well as organizing that vast and complicated machinery which an American party needs. Besides, it is a costly machinery, and they might be unable to find the money. Hence they recoil from the effort, and aim at creating a sentiment which may take concrete form in a vote, given for whichever of the parties seems at any particular time most likely to adopt, even if insincerely, the principles, and give effect, even if reluctantly, to the measures which the Independents advocate.

Why, however, do not the professional politicians who "know the ropes," and know where to get the necessary funds, more frequently seek to wreck a party in order to found a new one more to their mind? Because they are pretty well satisfied with the sphere which existing parties give them, and comprehend from their practical experience how hazardous such an experiment would be.

These considerations may help to explain the remarkable cohesion of parties in America, and the strength of party loyalty, a phenomenon more natural in Europe, where momentous issues inflame men's passions, and where the bulk of the adherents are ignorant men, caught by watchwords and readily attracted to a leader,

than in a republic where no party has any benefit to promise to the people which it may not as well get from the other, and where the voter is a keen-witted man, with little reverence for the authority of any individual. There is however another reason flowing from the character of the American people. They are extremely fond of associating themselves, and prone to cling to any organization they have once joined. They are sensitive to any charge of disloyalty. They are gregarious, each man more disposed to go with the multitude and do as they do than to take a line of his own,[1] and they enjoy "campaigning" for its own sake. These are characteristics which themselves require to be accounted for, but the discussion of them belongs to later chapters. A European is surprised to see prominent politicians supporting, sometimes effusively, a candidate of their own party whom they are known to dislike, merely because he is the party candidate. There is a sort of military discipline about party life which has its good as well as its bad side, for if it sometimes checks the expression of honest disapproval, it also restrains jealousy, abashes self-seeking, prevents recrimination.

Each of the American parties is far less under the control of one or two conspicuous leaders than are European parties. So far as this is due to the absence of men whose power over the people rests on the possession of brilliant oratorical or administrative gifts, it is a part of the question why there are not more such men in American public life, why there are fewer striking figures than in the days of Jefferson and Hamilton, of Webster and Calhoun. It is however also

[1] That is to say, they respect the authority of the mass, to which they themselves belong, though seldom that of individual leaders. See *post*, Chapter LXXXIV.—"The Fatalism of the Multitude."

due to the peculiarities of the Constitution. The want of concentration of power in the legal government is reflected in the structure of the party system. The separation of the legislative from the executive department lowers the importance of leadership in parties, as it weakens both these departments. The President, who is presumably among the leading men, cannot properly direct the policy of his party, still less speak for it in public, because he represents the whole nation. His ministers cannot speak to the people through Congress. In neither House of Congress is there necessarily any person recognized as the leader on either side. As neither House has the power over legislation and administration possessed by such an assembly as the French or Italian Chamber, or the English House of Commons, speeches delivered or strategy displayed in it do not tell upon the country with equal force and directness. There remains the stump, and it is more by the stump than in any other way that an American statesman speaks to the people. But what distances to be traversed, what fatigues to be encountered before he can be a living and attractive personality to the electing masses! An English statesman leaves London at three o'clock, and speaks in Birmingham, or Leeds, or Manchester, the same evening. In a few years, every great town knows him like its own mayor, while the active local politicians who frequently run up from their homes to London hear him from the galleries of the House of Commons, wait on him in deputations, are invited to the receptions which his wife gives during the season. Even railways and telegraphs cannot make America a compact country in the same sense that Britain is.

Since the Civil War ended, neither Republicans nor Democrats have leaned on and followed any one man as

Mr. Gladstone and Lord Beaconsfield, as before them Lords Derby, John Russell, and Palmerston, as still earlier Sir Robert Peel and Lord Melbourne, were followed in England. No one since Mr. Seward has exercised even so much authority as Mr. Bright has done when out of office, or as Gambetta did in France, or as Mr. Parnell does in Ireland, over the sections of opinion which each of these eminent men has represented.

How then are the parties led in Congress and the country? Who directs their policy? Who selects their candidates for the chief posts? These are questions which cannot be adequately answered till the nature of the party machinery has been described. For the moment I must be content to suggest the following as provisional answers:—

The most important thing is the selection of candidates. This is done in party meetings called conventions. When a party has any policy, it is settled in such a convention and declared in a document called a platform. When it has none, the platform is issued none the less. Party tactics in Congress are decided on by meetings of the party in each House of Congress called caucuses. Leaders have of course much to do with all three processes. But they often efface themselves out of respect to the sentiment of equality, and because power concealed excites less envy.

How do the parties affect social life? At present not very much, at least in the northern and middle States, because it is a slack time in politics. Your dining acquaintances, even your intimate friends, are not necessarily of the same way of voting as yourself, and though of course political views tend to become hereditary, there is nothing to surprise any one in finding sons belonging to different parties from their fathers.

In the South, where the recollections of the great struggle are kept alive by the presence of a negro voting power which has to be controlled, things are different: and they were different in the North till the passions of civil strife had abated.

So far, I have spoken of the parties only as national organizations, struggling for and acting on or through the Federal government. But it has already been observed (Chapter XLVI.) that they exist also as State and city organizations, contending for the places which States and cities have to give, seeking to control State legislatures and municipal councils. Every circumscription of State and local government, from the State of New York with its six millions of inhabitants down to the "city" that has just sprung up round a railway junction in the West, has a regular Republican party organization, confronted by a similar Democratic organization, each running its own ticket (*i.e.* list of candidates) at every election, for any office pertaining to its own circumscription, and each federated, so to speak, to the larger organizations above it, represented in them and working for them in drilling and "energizing" the party within the area which is the sphere of its action.

What have the tenets of such national parties as the Republicans and Democrats to do with the politics of States and cities? Very little with those of States, because a matter for Federal legislation is seldom also a matter for State legislation. Still less with those of cities or counties. Cities and counties have not strictly speaking any political questions to deal with; their business is to pave and light, to keep the streets clean, maintain an efficient police and well-barred prisons, administer the poor law and charitable institutions with

integrity, judgment, and economy. The laws regulating these matters have been already made by the State, and the city or county authority has nothing to do but administer them. Hence at city and county elections the main objects ought to be to choose honest and careful men of business. The opinions of candidates as to free trade, or the respective rights of the Union and the States do not signify, because they cannot apply these opinions to the questions which will come before them officially. It need make no difference to the action of a mayor or school trustee in any concrete question whether he holds Democratic or Republican views.

However, the habit of party warfare has been so strong as to draw all elections into its vortex; nor would either party feel safe if it neglected the means of rallying and drilling its supporters, which State and local contests supply. There is this advantage in the system, that it stimulates the political interest of the people, which is kept alive by this perpetual agitation. But the multiplicity of contests has the effect of making politics too absorbing an occupation for the ordinary citizen who has his profession or business to attend to; while the result claimed by those who in England defend the practice of fighting municipal elections on party lines, viz. that good men are induced to stand for local office for the sake of their party, is the last result desired by the politicians, or expected by any one. It is this constant labour which the business of politics involves, this ramification of party into all the nooks and corners of local government, that has produced the class of professional politicians, of whom it is now time to speak.

CHAPTER LVII

THE POLITICIANS

INSTITUTIONS are said to form men, but it is no less true that men give to institutions their colour and tendency. It profits little to know the legal rules and methods and observances of government, unless one also knows something of the human beings who tend and direct this machinery, and who, by the spirit in which they work it, may render it the potent instrument of good or evil to the people. These men are the politicans.

What is one to include under this term? In England it usually denotes those who are actively occupied in administering or legislating, or discussing administration and legislation. That is to say, it includes ministers of the Crown, members of Parliament (though some in the House of Commons and the majority in the House of Lords care little about politics), a few leading journalists, and a small number of miscellaneous persons, writers, lecturers, organizers, agitators, who occupy themselves with trying to influence the public. Sometimes the term is given a wider sweep, being taken to include all who labour for their political party in the constituencies, as *e.g.* the chairmen and secretaries of local party associations, and the more active committee men of the same bodies.[1] The former, whom we may call the Inner Circle

[1] In America (Canada as well as the United States) people do not

men, are professional politicians in this sense, and in this sense only, that politics is the main though seldom the sole business of their lives. But at present extremely few of them make anything by it in the way of money. A handful hope to get some post; a somewhat larger number find that a seat in Parliament enables them to push their financial undertakings or gives them at least a better standing in the commercial world. But the making of a livelihood does not come into the view of the great majority at all. The other class, who may be called the Outer Circle, are not professionals in any sense, being primarily occupied with their own avocations; and none of them, except here and there an organizing secretary, paid lecturer, or registration agent, makes any profit out of the work.[1] The phenomena of France and Italy and Germany are generally similar, that is to say, those who devote their whole time to politics are a very small class, those who make a living by it an even smaller one.[2] Of all the countries of Europe, Greece is that in which persons who spend their life in politics seem to bear the largest proportion to the whole population; and in Greece the pursuit of politics is usually the pursuit of place.

To see why things are different in the United States, why the Inner Circle is much larger both absolutely and relatively to the Outer Circle than in Europe, let us go

say "politicians," but "the politicians," because the word indicates a class with certain defined characteristics.

[1] Of course now and then a man who has worked hard for his party is rewarded by a place. Barristers who have spent their substance in contesting seats have a better chance of judgeships, and there are usually five or six practising counsel in the House of Commons who are supposed to contemplate the possibility of their obtaining legal office. But these cases are so few as to make no practical difference.

[2] The number of persons who live off politics by getting places or by manipulating finance is said to have increased in France of late years. But it cannot be very large even now.

back a little and ask what are the conditions which develop a political class. The point has so important a bearing on the characteristics of American politicians that I do not fear to dwell somewhat fully upon it.

In self-governing communities of the simpler kind —for one may leave absolute monarchies and feudal monarchies on one side—the common affairs are everybody's business and nobody's special business. Some few men by their personal qualities get a larger share of authority, and are repeatedly chosen to be archons, or generals, or consuls, or burgomasters, or landammans, but even these rarely give their whole time to the state, and make little or nothing in money out of it. This was the condition of the Greek republics, of early Rome,[1] of the cities of mediæval Germany and Italy, of the cantons of Switzerland till very recent times.

When in a large country public affairs become more engrossing to those who are occupied in them, when the sphere of government widens, when administration is more complex and more closely interlaced with the industrial interests of the community and of the world at large, so that there is more to be known and to be considered, the business of a nation falls into the hands of the men eminent by rank, wealth, and ability, who form a sort of governing class, largely hereditary. The higher civil administration of the state is in their hands; they fill the chief council or legislative chamber and conduct its debates. They have residences in the capital, and though they receive salaries when actually filling an office, the majority possess independent means, and pursue politics for the sake of fame, power, or excite-

[1] The principal business in life of Cincinnatus was to till his fields, and a dictatorship a mere interlude. When I waited on the president of the Republic of Andorra, one of the oldest states in Europe, some years ago, I found him with his coat off wielding a flail on the floor of his barn.

ment. Those few who have not independent means can follow their business or profession in the capital, or can frequently visit the place where their business is carried on. This was the condition of Rome under the later republic,[1] and of England and France till quite lately—indeed it is largely the case in England still—as well as of Prussia and Sweden.[2]

Let us see what are the conditions of the United States.

There is a relatively small leisured class of persons engaged in no occupation and of wealth sufficient to leave them free for public affairs. So far as such persons are to be found in the country, for some are to be sought abroad, they are to be found in a few great cities.

There is no class with a hereditary prescription to public office, no great families whose names are known to the people, and who, bound together by class sympathy and ties of relationship, help one another by keeping offices in the hands of their own members.

The country is a very large one, and has its political capital in a city without trade, without manufactures, without professional careers. Even the seats of State governments are often placed in comparatively small towns.[3] Hence a man cannot carry on his gainful occupation at the same time that he attends to "Inner Circle" politics.

[1] Rome in the later days of the republic had practically become a country, that is to say, the range of her authority and the mass of her public business were much greater than in any of the Greek cities, even in Athens in the days of Pericles.

[2] Norway, the most democratic of the monarchical countries of Europe, is the one which has probably the smallest class of persons continuously occupied with politics.

[3] *E.g.* The seat of government for Maryland is Annapolis, not Baltimore; for Ohio, Columbus, not Cincinnati; for Illinois, Springfield, not Chicago; for California, Sacramento, not San Francisco; for Washington Territory, Olympia, not Seattle or Walla Walla; for Louisiana, Baton Rouge, not New Orleans.

Members of Congress and of State legislatures are invariably chosen from the places where they reside. Hence a person belonging to the leisured class of a great city cannot get into the House of Representatives or the legislature of his State except as member for a district of his own city.

The shortness of terms of office, and the large number of offices filled by election, make elections very frequent. All these elections, with trifling exceptions, are fought on party lines, and the result of a minor one for some petty local office, such as county treasurer, affects one for a more important post, *e.g.* that of member of Congress. Hence constant vigilance, constant exertions on the spot, are needed. The list of voters must be incessantly looked after, newly-admitted or newly-settled citizens enrolled, the active local men frequently consulted and kept in good humour, meetings arranged for, tickets (*i.e.* lists of candidates) for all vacant offices agreed upon. One election is no sooner over than another approaches and has to be provided for, as the English sporting man reckons his year by "events," and thinks of Newmarket after Ascot, and of Goodwood after Newmarket.

Now what do these conditions amount to? To this —A great deal of hard and dull election and other local political work to be done. Few men of leisure to do it, and still fewer men of leisure likely to care for it. Nobody able to do it in addition to his regular business or profession. Little motive for anybody, whether leisured or not, to do the humbler and local parts of it (*i.e.* so much as concerns the minor elections), the parts which bring neither fame nor power.

If the work is to be done at all, some inducement, other than fame or power, must clearly be found. Why

not, some one will say, the sense of public duty? I will speak of public duty presently: meantime let it suffice to remark that to rely on public duty as the main motive power in politics is to assume a commonwealth of angels. Men such as we know them must have some other inducement. Even in the Christian Church there are other than spiritual motives to lead its pastors to spiritual work; nor do all poets write because they seek to express the passion of their souls. In America we discover a palpable inducement to undertake the dull and toilsome work of election politics. It is the inducement of places in the public service. To make them attractive they must be paid. They are paid, nearly all of them, memberships of Congress[1] and other Federal places, State places (including memberships of State legislatures), city and county places. Here then is the inducement, the remuneration for political work performed in the way of organizing and electioneering. Now add that besides the paid administrative and legislative places which a democracy bestows by election, judicial places are also in most of the States elective, and held for terms of years only; and add further, that the holders of nearly all those administrative places, Federal, State, and municipal, which are not held for a fixed term, are liable to be dismissed, and have been hitherto in practice dismissed, whenever power changes from one party to another,[2] so that those who belong to the party out of office have a direct chance of office when their party comes in. The inducement to undertake political work we

[1] Though, as observed in a previous chapter, the payment of members of Congress does not seem to have any marked effect in lowering the type of members. It is the offices rather than legislative posts that sustain the professional class.

[2] I am speaking of the practice up to within the last two or three years. It has been slightly modified lately in consequence of the progress of the civil service reform movement.

have been searching for is at once seen to be adequate, and only too adequate. The men for the work are certain to appear because remuneration is provided. Politics has now become a gainful profession, like advocacy, stockbroking, the dry goods trade, or the getting up of companies. People go into it to live by it, primarily for the sake of the salaries attached to the places they count on getting, secondarily in view of the opportunities it affords of making incidental and sometimes illegitimate gains. Every person in a high administrative post, whether Federal, State, or municipal, and, above all, every member of Congress, has opportunities of rendering services to wealthy individuals and companies for which they are willing to pay secretly in money or in money's worth. The better officials and legislators—they are the great majority, except in large cities—resist the temptation. The worst succumb to it, and the prospect of these illicit profits renders a political career distinctly more attractive to an unscrupulous man.[1]

We find therefore that in America all the conditions exist for producing a class of men specially devoted to political work and making a livelihood by it. It is work much of which cannot be done in combination with any other kind of regular work, whether professional or commercial. Even if the man who unites wealth and leisure to high intellectual attainments were a frequent figure in America, he would not take to this work; he would rather be a philanthropist or cultivate arts and letters. It is work which, steadily pursued by an active man, offers an income. Hence a large number of persons are drawn into it, and make it

[1] As to the extent to which corruption prevails, see *post*, Chapter LXVII.

the business of their life; and the fact that they are there as professionals has tended to keep amateurs out of it.

There are, however, two qualifications which must be added to this statement of the facts, and which it is best to add at once. One is that the mere pleasure of politics counts for something. Many people in America as well as in England undertake even the commonplace work of local canvassing and organizing for the sake of a little excitement, a little of the agreeable sense of self-importance, or from that fondness for doing something in association with others which makes a man become secretary to a cricket club or treasurer of a fund raised by subscription for some purpose he may not really care for. And the second qualification is that pecuniary motives operate with less force in rural districts than in cities, because in the former the income obtainable by public office is too small to induce men to work long in the hope of getting it. Let it therefore be understood that what is said in this chapter refers primarily to cities, and of course also to persons aiming at the higher Federal and State offices; and that I do not mean to deny that there is plenty of work done by amateurs as well as by professionals.

Having thus seen what are the causes which produce professional politicians, we may return to inquire how large this class is, compared with the corresponding class in the free countries of Europe, whom we have called the Inner Circle.

In America the Inner Circle, that is to say, the persons who make political work the chief business of their lives,[1] includes :—

[1] Of course I do not mean the business of their whole lives, for men

Firstly. All members of both Houses of Congress.

Secondly. All Federal office-holders except the judges, who are irremovable, and who have sometimes taken no prominent part in politics.

Thirdly. A large part of the members of State legislatures. How large a part, it is impossible to determine, for it varies greatly from State to State. I should guess that in New York, Pennsylvania, New Jersey, California, Maryland, and Louisiana, half the members were professional politicians; in Ohio, Virginia, Illinois, Texas, less than half; in Massachusetts, Vermont, Georgia, Kentucky, Iowa, Oregon, not more than one-fourth; in some other States, perhaps even less. But the line between a professional and non-professional politician is too indefinite to make any satisfactory estimate possible.

Fourthly. Nearly all State office-holders, excluding the judges in a few States, and most of the judges in the rest.

Fifthly. Nearly all holders of paid offices in the greater and in many of the smaller cities, and many holders of paid offices in the counties. There are, however, great differences in this respect between different States, the New England States and the newer States of the North-west, as well as some Southern States, choosing many of their county officials from men who are not regularly employed on politics, although members of the dominant party.

Sixthly. A large number of people who hold no office but want to get one. This category includes, of course, many of the "workers" of the party which does not command the majority for the time being, in State and

change their occupation frequently and lightly in America, but their chief business for the time being.

municipal affairs, and which has not, through the President, the patronage of Federal posts. It also includes many expectants belonging to the party for the time being dominant, who are earning their future places by serving the party in the meantime.[1]

All the above may fairly be called professional or Inner Circle politicians, but of their number I can form no estimate, save that it must be counted by hundreds of thousands, inasmuch as it practically includes nearly all office-holders and most expectants of public office.[2]

It must be remembered that the "work" of politics means in America the business of winning elections, and

[1] But, as already observed, there are also in the rural districts and smaller towns many workers and expectants who do not look for places.

[2] The Inner Circle may in England be roughly taken to include :—

Members of the House of Lords, say . .	100
Members of the House of Commons . .	670
Editors, managers, and chief writers on leading newspapers, say	280
Expectant candidates for House of Commons, say	450
Persons who in each constituency devote most of their time to politics, *e.g.* secretaries of political associations, registration agents, etc., say	2000
	3500

Comparatively few newspapers are primarily political, and in many constituencies (*e.g.* Irish and Highland counties) there are very few persons occupied in political work. I do not, therefore, think this estimate too low.

In the United States there are stated to be now about 120,000 Federal offices. Allowing one expectant for each office (a small allowance), and assuming the State and local offices bestowed as the reward for political services to be equal in number to Federal offices (they are, of course, far more numerous), and allowing one expectant to each such office, we should have a total of $120{,}000 \times 4 = 480{,}000$. Deducting from this total those who, though they work for office, do not make such work their main business, and those who work with no special eye to office, we should still have a very large total, probably over 200,000, of persons whose chief occupation and livelihood lies in politics.

that this work is incomparably heavier and more complex than in England, because :—

(1) The voters are a larger proportion of the population; (2) The government is more complex (Federal, State, and local) and the places filled by election are therefore far more numerous; (3) Elections come at shorter intervals; (4) The machinery of nominating candidates is far more complete and intricate; (5) The methods of fighting elections are far more highly developed, *i.e.* they are matters requiring more technical knowledge and skill; (6) Ordinary private citizens do less election work, because they are busier than in England, and the professionals exist to do it for them.

I have observed that there are also plenty of men engaged in some trade or profession who interest themselves in politics and work for their party without any definite hope of office or other pecuniary aim. They correspond to what we have called the Outer Circle politicians of Europe. It is hard to draw a line between the two classes, because they shade off into one another, there being many farmers or lawyers or saloon-keepers, for instance, who, while pursuing their regular calling, bear a hand in politics, and look to be some time or other rewarded for doing so. When this expectation becomes a considerable part of the motive for exertion, such an one may fairly be called a professional, at least for the time being, for although he has other means of livelihood, he is apt to be impregnated with the habits and sentiments of the professional class.

The proportion between Outer Circle and Inner Circle men is in the United States a sort of ozonometer by which the purity and healthiness of the political atmosphere may be tested. Looking at the North only, for I have no tolerable data as to the South, and ex-

cluding congressmen, the proportion of men who exert themselves in politics without pecuniary motive is largest in New England, in the country parts of New York, in Northern Ohio, and the North-western States, while the professional politicians most abound in the great cities—New York, Philadelphia, Boston, Baltimore, Buffalo, Cincinnati, Chicago, St. Louis, New Orleans, San Francisco. This is because these cities have the largest masses of ignorant voters, and also because their municipal governments, handling large revenues, offer the largest facilities for illicit gains.

I shall presently return to the Outer Circle men. Meantime let us examine the professionals somewhat more closely; and begin with those of the humbler type, whose eye is fixed on a municipal or other local office, and seldom ranges so high as a seat in Congress.

This species, like the weeds which follow human dwellings, thrives best in cities, and even in the most crowded parts of cities. It is known to the Americans as the "ward politician," because the city ward is the chief sphere of its activity, and the ward meeting the first scene of its triumphs. A statesman of this type usually begins as a saloon or bar-keeper, an occupation which enables him to form a large circle of acquaintances, especially among the "loafer" class who have votes but no reason for using them one way more than another, and whose interest in political issues is therefore as limited as their stock of political knowledge. But he may have started as a lawyer of the lowest kind, or lodging-house keeper, or have taken to politics after failure in store-keeping. The education of this class is only that of the elementary schools: if they have come after boyhood from Europe, it is not even that. They have of course no comprehension of political questions

or zeal for political principles; politics mean to them merely a scramble for places. They are usually vulgar, sometimes brutal, more rarely criminal, or at least the associates of criminals. They it is who move about the populous quarters of the great cities, form groups through whom they can reach and control the ignorant voter, pack meetings with their creatures.

Their methods and their triumphs must be reserved for a later chapter. Those of them who are Irish, an appreciable proportion in three or four great cities, have seldom Irish patriotism to redeem the mercenary quality of their politics. They are too strictly practical for that, being regardful of the wrongs of Ireland only so far as these furnish capital to be used with Irish voters. Their most conspicuous virtues are shrewdness, a sort of rough good-fellowship with one another, and loyalty to their chiefs, from whom they expect promotion in the ranks of the service. The plant thrives in the soil of any party, but its growth is more vigorous in whichever party is for the time dominant in a given city.

English critics, taking their cue from American pessimists, have often described these men as specimens of the whole class of politicians. This is misleading. The men are bad enough both as an actual force and as a symptom. But they are confined to a few great cities, those eight or nine I have already mentioned; it is their exploits there, and particularly in New York, where the mass of ignorant immigrants is largest, that have made them famous.

In the smaller cities, and in the country generally, the minor politicians are mostly native Americans, less ignorant and more respectable than these last-mentioned street vultures. The bar-keeping element is represented among them, but the bulk are petty lawyers, officials, Federal as well as State and county, and people who for

want of a better occupation have turned office-seekers, with a fair sprinkling of store-keepers, farmers, and newspaper men. The great majority have some regular avocation, so that they are by no means wholly professionals. Law is of course the business which best fits in with politics. They are not below the level of the class to which they belong, which is what would be called in England the lower middle, or in France the *petite bourgeoisie*, and they often suppose themselves to be fighting for Republican or Democratic principles, even though in fact concerned chiefly with place-hunting. It is not so much positive moral defects that are to be charged on them as a slightly sordid and selfish view of politics and a laxity in the use of electioneering methods.

These two classes do the local work and dirty work of politics. They are the rank and file. Above them stand the officers in the political army, the party managers, including the members of Congress and chief men in the State legislatures, and the editors of influential newspapers. Some of these have pushed their way up from the humbler ranks. Others are men of superior ability and education, often college graduates, lawyers who have had practice, less frequently merchants or manufacturers who have slipped into politics from business. There are all sorts among them, creatures clean and unclean, as in the sheet of St. Peter's vision, but that one may say of politicians in all countries. What characterizes them as compared with the corresponding class in Europe is that their whole time is more frequently given to political work, that most of them draw an income from politics and the rest hope to do so, that they come more largely from the poorer and less cultivated than from the higher ranks of society, and that they include but few men who have pur-

sued any of those economical, social, or constitutional studies which form the basis of politics and legislation, although many are proficients in the arts of popular oratory, of electioneering, and of party management.

They show a high average level of practical cleverness and versatility, and a good deal of legal knowledge. They are usually correct in life, for intoxication as well as sexual immorality is condemned by American more severely than by European opinion, but are often charged with a low tone, with laxity in pecuniary matters, with a propensity to commit or to excuse jobs, with a deficient sense of the dignity which public office confers and the responsibility it implies. I shall elsewhere discuss the validity of these charges, and need only observe here that even if the last thirty years have furnished some grounds for accusing the class as a whole, there are many brilliant exceptions, many leading politicians whose honour is as stainless and patriotism as pure as that of the best European statesmen. In this general description I am simply repeating what non-political Americans themselves say. It is possible that with their half-humorous tendency to exaggerate they dwell too much on the darker side of their public life. My own belief is that things are healthier than the newspapers and common talk lead a traveller to believe, and that the blackness of the worst men in the large cities has been allowed to darken the whole class of politicians as the smoke from a few factories will darken the sky over a whole town. However, the sentiment I have described is no doubt the general sentiment. "Politician" is a term of reproach, not merely among the "superfine philosophers" of New England colleges, but among the better sort of citizens over the whole Union. "How did such a job come to be perpetrated?" I remember once asking a casual

acquaintance who had been pointing out some scandalous waste of public money. "Why, what can you expect from the politicians?" was the surprised answer.

Assuming these faults to exist, to what causes are they to be ascribed? Granted that politics has to become a gainful profession, may it not still be practised with as much integrity as other professions? Do not the higher qualities of intellect, the ripe fruits of experience and study, win for a man ascendency here as in Europe? Does not the suspicion of dishonour blight his influence with a public which is itself at least as morally exacting as that of any European country? These are questions which can be better answered when the methods of party management have been described, the qualities they evoke appreciated, their reaction on men's character understood.

It remains to speak of the non-professional or Outer Circle politicians, those who work for their party without desiring office. These men were numerous and zealous shortly before and during the Civil War, when the great questions of the exclusion of slavery from the Territories and the preservation of the Union kindled the enthusiasm of the noblest spirits of the North, women as well as men. No country ever produced loftier types of dauntless courage and uncompromising devotion to principle than William Lloyd Garrison and his fellow-workers in the Abolitionist cause. Office came to Abraham Lincoln, but he would have served his party just as earnestly if there had been no office to reward him.[1] Nor was there any want of high-souled patriotism in the South. The people gave their

[1] Lincoln was never a professional politician, for he continued to practise as a lawyer till he became President: but he was so useful to his party that for some years before 1860 he had been obliged to spend great part of his time in political work, and probably some would have called him a professional.

blood freely, and among the leaders there were many who offered up fine characters as well as brilliant talents on an altar which all but themselves deemed unhallowed. When these great issues were finally settled, and the generation whose manhood they filled began to pass away, there was less motive for ordinary citizens to trouble themselves about public affairs. Hence the professional politicians had the field left free; and as they were ready to take the troublesome work of organizing, the ordinary citizen was contented to be superseded, and thought he did enough when he went to the poll for his party. Still there are districts where a good deal of unpaid and disinterested political work is done. In some parts of New England, New York, and Ohio, for instance, citizens of position bestir themselves to rescue the control of local elections from the ward politicians. In the main, however, the action of the Outer Circle consists in voting, and this the ordinary citizen does more steadily and intelligently than anywhere in Europe, unless perhaps in Switzerland. Doubtless much of the work which Outer Circle politicians do in Europe is in America done by professionals. But that lively interest in politics which the English Outer Circle feels, and which is not felt by the English public generally, is in America felt by almost the whole of the nation, that is to say, by the immense majority of native white Americans, and even by the better sort of immigrants, or, in other words, the American Outer Circle comes far nearer to including the whole nation than does the Outer Circle of England. Thus the influence which counterworks that of professionals is the influence of public opinion expressing itself constantly through its countless voices in the press, and more distinctly at frequent intervals by the ballot-box.

CHAPTER LVIII

WHY THE BEST MEN DO NOT GO INTO POLITICS

"BUT," some one will say, who has read the reasons just assigned for the development of a class of professional politicians, "you allow nothing for public spirit. It is easy to show why the prize of numerous places should breed a swarm of office-seekers, not so easy to understand why the office-seekers should be allowed to have this arena of public life in a vast country, a free country, an intelligent country, all to themselves. There ought to be patriotic citizens ready to plunge into the stream and save the boat from drifting towards the rapids. They would surely have the support of the mass of the people who must desire honest and economical administration. If such citizens stand aloof, there are but two explanations possible. Either public life must be so foul that good men cannot enter it, or good men must be sadly wanting in patriotism."

This kind of observation is so common in European mouths as to need an explicit answer. The answer is two-fold.

In the first place, the arena is not wholly left to the professionals. Both the Federal and the State legislatures contain a fair proportion of upright and disinterested men, who enter chiefly, or largely, from a

sense of public duty, and whose presence keeps the mere professionals in order. So does public opinion, deterring even the bad men from the tricks to which they are prone, and often driving them, when detected in a serious offence, from place and power.

However, this first answer is not a complete answer, for it must be admitted that the proportion of men of intellectual and social eminence who enter public life is smaller in America than it has been during the present century in each of the free countries of Europe. Does this fact indicate a want of public spirit?

It is much to be wished that in every country public spirit were the chief motive propelling men into public life. But is it so anywhere now? Has it been so at any time in a nation's history? Let any one in England, dropping for the moment that self-righteous attitude of which Englishmen are commonly accused by foreigners, ask himself how many of those whom he knows as mixing in the public life of his own country have entered it from motives primarily patriotic, how many have been actuated by the love of fame or power, the hope of advancing their social pretensions or their business relations. There is nothing necessarily wrong in such forms of ambition; but if we find that they count for much in the public life of one country, and for comparatively little in the public life of another, we must expect to find the latter able to reckon among its statesmen fewer persons of eminent intelligence and energy.

Now there are several conditions present in the United States, conditions both constitutional and social, conditions independent either of political morality or of patriotism, which make the ablest citizens less disposed to enter political life than they would otherwise be, or than persons of the same class are in Europe. I have

already referred to some of these, but recapitulate them shortly here because they are specially important in this connection.

The want of a social and commercial capital is such a cause. To be a Federal politician you must live in Washington, that is, abandon your circle of home friends, your profession or business, your local public duties. But to live in Paris or London is of itself an attraction to many Englishmen and Frenchmen.

There is no class in America to which public political life comes naturally, as it still does to a certain class in England; no families with a sort of hereditary right to serve the state. Nobody can get an early and easy start on the strength of his name and connections, as still happens in several European countries.

In Britain or France a man seeking to enter the higher walks of public life has more than five hundred seats for which he may stand. If his own town or county is impossible he goes elsewhere. In the United States he cannot. If his own district is already filled by a member of his own party, there is nothing to be done, unless he will condescend to undermine and supplant at the next nominating convention the sitting member. If he has been elected and happens to lose his own re-nomination or re-election, he cannot re-enter Congress by any other door. The fact that a man has served gives him no claim to be allowed to go on serving. In the West, rotation is the rule. No wonder that, when a political career is so precarious, men of worth and capacity hesitate to embrace it. They cannot afford to be thrown out of their life's course by a mere accident.[1]

[1] The tendency in Switzerland to re-elect the same men to the legislature and to public office has doubtless worked as much for good in politics there as the opposite tendency works for evil in the United States. Men who have supported measures which their constituency disapproves

Politics are less interesting than in Europe. The two kinds of questions which most attract eager or ambitious minds, questions of foreign policy and of domestic constitutional change, are generally absent, happily absent. Currency and tariff questions and financial affairs generally, internal improvements, the regulation of railways and so forth, are important, no doubt, but to some minds not fascinating. How few people in the English or French legislatures have mastered them, or would relish political life if it dealt with little else! There are no class privileges or religious inequalities to be abolished. Religion, so powerful a political force in Europe, is outside politics altogether.

In most European countries there has been for many years past an upward pressure of the poorer or the unprivileged masses, a pressure which has seemed to threaten the wealthier and more particularly the landowning class. Hence members of the latter class have had a strong motive for keeping tight hold of the helm of state. They have felt a direct personal interest in sitting in the legislature and controlling the administration of their country. This has not been so in America. Its great political issues have not been class issues. On the contrary there has been so great and general a sense of economic security, whether well or ill founded I do not now inquire, that the wealthy and educated have been content to leave the active work of politics alone.

The division of legislative authority between the Federal Congress and the legislatures of the States further lessens the interest and narrows the opportunities of a political career. Some of the most useful mem-

are often re-elected because they are thought honest and capable. The existence of the *referendum* facilitates this.

bers of the English Parliament have been led to enter it by their zeal for philanthropic schemes and social reforms. Others enter because they are interested in foreign politics or in commercial questions. In the United States foreign politics and commercial questions belong to Congress, so no one will be led by them to enter the legislature of his State. Social reforms and philanthropic enterprises belong to the State legislatures, so no one will be led by them to enter Congress. The limited sphere of each body deprives it of the services of many active spirits who would have been attracted by it had it dealt with both these sets of matters, or with the particular set of matters in which their own particular interest happens to lie.

In America there are more easy and attractive openings into other careers than in most European countries. The settlement of the great West, the making and financing of railways, the starting of industrial or mercantile enterprises in the newer States, all offer a tempting field to ambition, ingenuity, and self-confidence. A man without capital or friends has a better chance than in Europe, and as the scale of undertakings is vaster, the prizes are more seductive. Hence much of the practical ability which in the Old World goes to Parliamentary politics or to the civil administration of the state, goes in America into business, especially into railways and finance. No class strikes one more by its splendid practical capacity than the class of railroad men. It includes administrative rulers, generals, diplomatists, financiers, of the finest gifts. And in point of fact (as will be more fully shown later) the railroad kings have of late years swayed the fortunes of American citizens more than the politicians.

The fascination which politics have for many people

in England is largely a social fascination. Those who belong by birth to the upper classes like to support their position in county society by belonging to the House of Commons, or by procuring either a seat in the House of Lords, or the lord-lieutenancy of their county, or perhaps a post in the royal household. The easiest path to these latter dignities lies through the Commons. Those who spring from the middle class expect to find by means of politics an entrance into a more fashionable society than they have hitherto frequented. Their wives will at least be invited to the party receptions, or they may entertain a party chieftain when he comes to address a meeting in their town. Such inducements scarcely exist in America. A congressman, a State governor, a city mayor, gains nothing socially by his position. There is indeed, except in a few Eastern cities with exclusive sets, really nothing in the nature of a social prize set before social ambition, while the career of political ambition is even in those cities wholly disjoined from social success. The only exception to this rule occurs in Washington, where a senator or cabinet minister enjoys *ex officio* a certain social rank.[1]

None of these causes is discreditable to America, yet, taken together, they go far to account for the large development of the professional element among poli-

[1] It is the same in some, though by no means in all, of the cantons of Switzerland. Office carries little or no social consideration with it. In some cantons the old families have so completely withdrawn or become so completely shut out from public office, federal or cantonal, that it would be assumed that a politician was necessarily a plebeian. I remember to have been told in Bern of a foreign diplomatist who, walking one day with one of the old patricians of the city, stopped at the door of the Government offices. "Where are you going?" asked the patrician. "To see one of your ministers on business." "You don't mean that you are going to speak to one of that *canaille!*" was the reply. The minister was, as Swiss statesmen generally are, a perfectly respectable man; but to a Bernese Junker his being a minister was enough to condemn him.

ticians. Putting the thing broadly, one may say that in America, while politics are relatively less interesting than in Europe and lead to less, other careers are relatively more interesting and lead to more.[1]

It may however be alleged that I have omitted one significant ground for the distaste of "the best people" for public life, viz. the bad company they would have to keep, the general vulgarity of tone in politics, the exposure to invective or ribaldry by hostile speakers and a reckless press.

I omit this ground because it seems insignificant. In every country a politician has to associate with men whom he despises and distrusts, and those whom he most despises and distrusts are sometimes those whose so-called social rank is highest—the sons or nephews of great nobles. In every country he is exposed to misrepresentation and abuse, and the most galling misrepresentations are not the coarse and incredible ones, but those which have a semblance of probability, which delicately discolour his motives and ingeniously pervert his words. A statesman must soon learn, even in decorous England or punctilious France or polished Italy, to disregard all this, and rely upon his conscience for his peace of mind, and upon his conduct for the respect of his countrymen. If he can do so in England or France or Italy, he may do so in America also. No more there than in Europe has any upright man been written down, for though the American press is unsparing, the American people are shrewd, and sometimes believe too little rather than too much evil of a man whom the press assails. Although therefore one hears the

[1] This is true even of eminence in letters or art. A great writer or eloquent preacher is relatively more honoured and valued in America than in England.

pseudo-European American complain of newspaper violence, and allege that it keeps him and his friends from doing their duty by the country, I could not learn the name of any able and high-minded man of whom it could be truly said that through this cause his gifts and virtues had been reserved for private life. The roughness of politics has, no doubt, some influence on the view which wealthy Americans take of a public career, but these are just the Americans who think that European politics are worked, to use the common phrase, "with kid gloves," and they are not the class most inclined anyhow to come to the front for the service of the nation. Without denying that there is recklessness in the American press, and a want of refinement in politics generally, I do not believe that these phenomena have anything like the importance which European visitors are taught, and willingly learn, to attribute to them. Far more weight is to be laid upon the difficulties which the organization of the party system, to be described in the following chapters, throws in the way of men who seek to enter public life. There is, as we shall see, much that is disagreeable, much that is even humiliating, in the initial stages of a political career, and doubtless many a pilgrim turns back after a short experience of this Slough of Despond.

To explain the causes which keep so much of the finest intellect of the country away from national business is one thing, to deny the unfortunate results would be quite another. Unfortunate they certainly are. But the downward tendency observable since the end of the Civil War seems to have been arrested. When the war was over, the Union saved, and the curse of slavery gone for ever, there came a season of contentment and of lassitude. A nation which had surmounted such dangers

seemed to have nothing more to fear. Those who had fought with tongue and pen and rifle, might now rest on their laurels. After long-continued strain and effort, the wearied nerve and muscle sought repose. It was repose from political warfare only. For the end of the war coincided with the opening of a time of swift material growth and abounding material prosperity, in which industry and the development of the West absorbed more and more of the energy of the people. Hence a neglect of the details of politics such as had never been seen before. The last few years have brought a revival of interest in public affairs, and especially in the management of cities. There is more speaking and writing and thinking, practical and definite thinking, upon the principles of government than at any previous epoch. Good citizens are beginning to put their hands to the machinery of government; and it is noticed that those who do so are, more largely than formerly, young men, who have not contracted the bad habits which the practice of politics has engendered among many of their elders, and who will in a few years have become an even more potent force than they are now. If the path to Congress and the State legislatures and the higher municipal offices were cleared of the stumbling-blocks and dirt heaps which now encumber it, cunningly placed there by the professional politicians, a great change would soon pass upon the composition of legislative bodies, and a new spirit be felt in the management of State and municipal as well as of national affairs.

CHAPTER LIX

PARTY ORGANIZATIONS

THE Americans are, to use their favourite expression, a highly executive people, with a greater ingenuity in inventing means, and a greater promptitude in adapting means to an end, than any European race. Nowhere are large undertakings organized so skilfully; nowhere is there so much order with so much complexity; nowhere such quickness in correcting a suddenly discovered defect, in supplying a suddenly arisen demand.

Government by popular vote, both local and national, is older in America than in continental Europe. It is far more complete than even in England. It deals with larger masses of men. Its methods have engaged a greater share of attention, enlisted more ingenuity and skill in their service, than anywhere else in the world. They have therefore become more elaborate and, so far as mere mechanism goes, more perfect than elsewhere.

The greatest discovery ever made in the art of war was when men began to perceive that organization and discipline count for more than numbers. This discovery gave the Spartan infantry a long career of victory in Greece, and the Swiss infantry a not less brilliant renown in the later Middle Ages. The Americans made a similar discovery in politics some fifty or sixty years ago. By degrees, for even in America great truths do

not burst full-grown upon the world, it was perceived that the victories of the ballot-box, no less than of the sword, must be won by the cohesion and disciplined docility of the troops, and that these merits can only be secured by skilful organization and long-continued training. Both parties flung themselves into the task, and the result has been an extremely complicated system of party machinery, firm yet flexible, delicate yet quickly set up and capable of working well in the roughest communities. Strong necessity, long practice, and the fierce competition of the two great parties, have enabled this executive people to surpass itself in the sphere of electioneering politics. Yet the principles are so simple that it will be the narrator's fault if they are not understood.

One preliminary word upon the object of a party organization. To a European politician, by which I mean one who knows politics but does not know America, the aims of a party organization, be it local or general, seem to be four in number—

Union—to keep the party together and prevent it from wasting its strength by dissensions and schisms.

Recruiting—to bring in new voters, *e.g.* immigrants when they obtain citizenship, young men as they reach the age of suffrage, new-comers, or residents hitherto indifferent or hostile.

Enthusiasm—to excite the voters by the sympathy of numbers, and the sense of a common purpose, rousing them by speeches or literature.

Instruction—to give the voters some knowledge of the political issues they have to decide, to inform them of the virtues of their leaders, and the crimes of their opponents.

These aims, or at least the first three of them, are

pursued by the party organizations of America with eminent success. But they are less important than a fifth object which has been little regarded in Europe, though in America it is the mainspring of the whole mechanism. This is the selection of party candidates; and it is important not only because the elective places are so numerous, far more numerous than in any European country, but because they are tenable for short terms, so that elections frequently recur. Since the parties, having of late had no really distinctive principles, and therefore no well-defined aims in the direction of legislation or administration, exist practically for the sake of filling certain offices, and carrying on the machinery of government, the choice of those members of the party whom the party is to reward, and who are to strengthen it by the winning of the offices, becomes a main end of its being.

There are three ways by which in self-governing countries candidates may be brought before electors. One is by the candidate's offering himself, appealing to his fellow-citizens on the strength of his personal merits, or family connections, or wealth, or local influence. This was a common practice in most English constituencies till our own time; and seems to be the practice over parliamentary Europe still. Another is for a group or junto of men influential in the constituency to put a candidate forward, intriguing secretly for him or openly recommending him to the electors. This also largely prevailed in England, where in counties four or five of the chief landowners used to agree as to the one of themselves who should stand for the county; or chose the eldest son of a duke or marquis as the person whom his rank designated.[1] So in Scotch

[1] Thus in Mr. Disraeli's novel of *Tancred* the county member, a man

boroughs a little knot of active bailies and other citizens combined to bring out a candidate, but generally kept their action secret, for "the clique" was always a term of reproach. The practice is common in France now, where the committees of each party recommend a candidate.

The third system is that in which the candidate is chosen neither by himself nor by the self-elected group, but by the people themselves, *i.e.* by the members of a party, whether assembled in mass or acting through representatives chosen for the purpose. This plan offers several advantages. It promises to secure a good candidate, because presumably the people will choose a suitable man. It encourages the candidate, by giving him the weight of party support, and therefore tends to induce good men to come forward. It secures the union of the party, because a previous vote has determined that the candidate is the man whom the majority prefer, and the minority are therefore likely, having had their say and been fairly outvoted, to fall into line and support him. This is the system which now prevails from Maine to California, and is indeed the keystone of transatlantic politics. But there is a further reason for it than those I have mentioned.

That no American dreams of offering himself for a post unless he has been chosen by the party[1] is due not to the fact that few persons have the local pre-eminence which the social conditions of Europe bestow on the leading landowners of a neighbourhood, or on some great merchants or employers in a town, nor again to the modesty which makes an English candidate delay presenting himself as a candidate for Parliament until

of good birth and large estates, offers to retire in order to make room for the eldest son of the Duke when he comes of age.

[1] It may sometimes, though rarely, be a schismatic or recalcitrant section of the party, as will be seen hereafter.

he has got up a requisition to himself to stand, but to the notion that the popular mind and will are and must be all in all, that the people must not only create the office-bearer by their votes, but even designate the persons for whom votes may be given. For a man to put himself before the voters is deemed presumptuous, because an encroachment on their right to say whom they will even so much as consider. The theory of popular sovereignty requires that the ruling majority must name its own standard-bearers and servants, the candidates, must define its own platform, must in every way express its own mind and will. Were it to leave these matters to the initiative of candidates offering themselves, or candidates put forward by an unauthorized clique, it would subject itself to them, would be passive instead of active, would cease to be worshipped as the source of power. A system for selecting candidates is therefore not a mere contrivance for preventing party dissensions, but an essential feature of matured democracy.

It was not however till democracy came to maturity that the system was perfected. As far back as the middle of last century it was the custom in Massachusetts, and probably in other colonies, for a coterie of leading citizens to put forward candidates for the offices of the town or colony, and their nominations, although clothed with no authority but that of the individuals making them, were generally accepted. This lasted on after the Revolution, for the structure of society still retained a certain aristocratic quality. Clubs sprang up which, especially in New York State, became the organs of groups and parties, brought out candidates, and conducted election campaigns; while in New England the clergy and the men of substance continued to act as leaders. Presently, as the democratic spirit grew, and

people would no longer acquiesce in self-appointed chiefs, the legislatures began to be recognized as the bodies to make nominations for the higher Federal and State offices. Each party in Congress nominated the candidate to be run for the presidency, each party in a State legislature the candidate for governor, and often for other places also. This lasted during the first two or three decades of the present century, till the electoral suffrage began to be generally lowered, and a generation which had imbibed Jeffersonian principles had come to manhood, a generation so filled with the spirit of democratic equality that it would recognize neither the natural leaders whom social position and superior intelligence indicated, nor the official leadership of legislative bodies. As party struggles grew more bitter, a party organization became necessary, which better satisfied the claims of petty local leaders, which knit the voters in each district together and concentrated their efforts, while it expressed the absolute equality of all voters, and the right of each to share in determining his candidate and his party platform. The building up of this new organization was completed for the Democratic party about the year 1835, for the Whig party not till some years later. When the Republican party arose about 1854, it reproduced so closely, or developed on lines so similar, the methods which experience had approved, that the differences between the systems of the two great parties are now unimportant, and may be disregarded in the sketch I have to give.[1]

The essential feature of the system is that it is from bottom to top strictly representative. This is because

[1] What makes it hard to present a perfectly accurate and yet concise description is that these are variations between the arrangements in cities and those in rural districts, as well as between the arrangements in different States.

it has power, and power can flow only from the people. An organization which exists, like the political associations of England, solely or mainly for the sake of canvassing, conducting registration, diffusing literature, getting up courses of lectures, holding meetings and passing resolutions, has little or no power. Its object is to excite, or to persuade, or to manage such business as the defective registration system of the country leaves to be fulfilled by voluntary agencies. So too in America the committees or leagues which undertake to create or stimulate opinion have no power, and need not be strictly representative. But when an organization which the party is in the habit of obeying, chooses a party candidate, it exerts power, power often of the highest import, because it practically narrows the choice of a party, that is, of about a half of the people, to one particular person out of the many for whom they might be inclined to vote.[1] Such power would not be yielded to any but a representative body, and it is yielded to the bodies I shall describe because they are, at least in theory, representative.

[1] The rapid change in the practice of England in this point is a curious symptom of the progress of democratic ideas and usages there. As late as the general elections of 1868 and 1874, nearly all candidates offered themselves to the electors, though some professed to do so in pursuance of requisitions emanating from the electors. In 1880 many—I think most—Liberal candidates in boroughs, and some in counties, were chosen by the local party associations, and appealed to the Liberal electors on the ground of having been so chosen. In 1885 nearly all new candidates were so chosen, and a man offering himself against the nominee of the association was denounced as an interloper and traitor to the party. The same process has been going on in the Tory party, though more slowly.

CHAPTER LX

THE MACHINE

THE organization of an American party consists of two distinct, but intimately connected, sets of bodies, the one permanent, the other temporary. The function of the one is to manage party business, of the other to nominate party candidates.

The first of these is a system of managing committees. In some States every election district has such a committee, whose functions cover the political work of the district. Thus in country places there is a township committee, in cities a ward committee. There is a committee for every city, for every district, and for every county. In other States it is only the larger areas, cities, counties, and congressional or State Assembly districts that have committees. There is, of course, a committee for each State, with a general supervision of such political work as has to be done in the State as a whole. There is a national committee for the political business of the party in the Union as a whole, and especially for the presidential contest.[1] The whole country is covered by this network of committees, each with a sphere of action corresponding to some con-

[1] Within the State Committees and National Committee there is a small Executive Committee which practically does most of the work and exercises most of the power.

stituency or local election area, so that the proper function of a city committee, for instance, is to attend to elections for city offices, of a ward committee to elections for ward offices, of a district committee to elections for district offices. Of course the city committee, while supervising the general conduct of city elections, looks to each ward organization to give special attention to the elections in its own ward; and the State committee will in State elections expect similar help from, and be entitled to issue directions to, all bodies acting for the minor areas—districts, counties, townships, cities, and wards—comprised in the State. The smaller local committees are in fact autonomous for their special local purposes, but subordinate in so far as they serve the larger purposes common to the whole party. The ordinary business of these committees is to raise and apply funds for election purposes and for political agitation generally, to organize meetings when necessary, to disseminate political tracts and other information, to look after the press, to attend to the admission of immigrants as citizens and their enrolment on the party lists.[1] At election times they have also to superintend the canvass, to procure and distribute tickets at the polls, to allot money for various election services; but they are often aided, or virtually superseded, in this work by "campaign committees" specially created for the occasion. Finally, they have to convoke at the proper times those nominating assemblies which form the other parallel but distinct half of the party organization.

These committees are permanent bodies, that is to

[1] In many States a person who has resided for a certain specified period may vote even though he has not been naturalized as a citizen.

The business of registration is, I think, in all States undertaken by the public authority for the locality, instead of being, as in England, partially left to the action of the individual citizen or of the parties.

say, they are always in existence and capable of being called into activity at short notice. They are re-appointed annually by the Primary (hereinafter mentioned) or Convention for their local area, as the case may be, and of course their composition may be completely changed on a re-appointment. In practice it is but little changed, the same men continuing to serve year after year, because they hold the strings in their hands, because they know most and care most about the party business. In particular, the chairman is apt to be practically a permanent official, and (if the committee be one for a populous area) a powerful and important official, who has large sums to disburse and quite an army of workers under his orders. The chairmanship of the organizing committee of the county and city of New York (these areas being the same), for instance, is a post of great responsibility and influence, in which high executive gifts find a worthy sphere for their exercise.

One function and one only is beyond the competence of these committees—the choice of candidates. That belongs to the other and parallel division of the party organization, the nominating assemblies.

Every election district, by which I mean every local area or constituency which chooses a person for any office,[1] has a party meeting to select the party candidate for that office. This is called Nominating. If the district is not subdivided, *i.e.* does not contain any lesser districts, its meeting is called a Primary. A primary has two duties. One is to select the candidates for its own local district offices. Thus in the country a township primary[2] nominates the can-

[1] Including under the term "office" the post of representative in any legislative assembly or municipal council.

[2] I take township and ward as examples, but in parts of the country

didates for township offices, in a city a ward primary nominates those for ward offices (if any). The other duty is to elect delegates to the nominating meetings of larger areas, such as the county or congressional district in which the township is situate, or the city to which the ward belongs. The primary is composed of all the party voters resident within the bounds of the township or ward. They are not too numerous, for in practice the majority do not attend, to meet in one room, and they are assumed to be all alike interested. But as the party voters in such a large area as a county, congressional district, or city, are too numerous to be able to meet and deliberate in one room, they must act through representatives. The choice of candidates for office in such larger areas is therefore entrusted to a body called a Nominating Convention. It is a representative body composed of delegates from all the primaries within its limits, who have been chosen at those primaries for the sole purpose of sitting in the convention and there selecting the candidates.

Sometimes a convention of this kind has itself to choose delegates to proceed to a still higher convention for a larger area. The greatest of all nominating bodies, that which is called the National Convention and nominates the party candidate for the presidency, is entirely composed of delegates from other conventions, no primary being directly represented in it. As a rule, however, there are only two sets of nominating authorities, the primary which selects candidates for its own petty offices, the convention composed of the delegates from all the primaries in the local circumscriptions of the district for which the convention acts.

where the township is not the unit of local government (see Chapter XLVIII. *ante*), the local unit, whatever it is, must be substituted.

A primary, of course, sends delegates to a number of different conventions, because its area, let us say the township or ward, is included in a number of different election districts, each of which has its own convention. Thus the same primary will in a city choose delegates to at least the following conventions, and probably to one or two others.[1] (*a*) To the city convention, which nominates the mayor and other city officers. (*b*) To the Assembly district convention, which nominates candidates for the lower house of the State legislature. (*c*) To the senatorial district convention, which nominates candidates for the State Senate. (*d*) To the congressional district convention, which nominates candidates for Congress. (*e*) To the State convention, which nominates candidates for the governorship and other State offices. Sometimes, however, the nominating body for an Assembly district is a primary and not a convention. In New York City the Assembly district is the unit, and each of the twenty-four has its primary.

This seems complex: but it is a reflection of the complexity of government, there being everywhere three authorities, Federal, State, and Local (this last further subdivided), covering the same ground, yet the two former quite independent of one another, and the third for many purposes distinct from the second.

The course of business is as follows:—A township or ward primary is summoned by the local party managing committee, who fix the hour and place of meeting, or if there be not such a committee, then by some permanent officer of the organization in manner prescribed by the bye-laws. A primary for a larger area is usually

[1] There may be also a county convention for county offices, and a judicial district convention to nominate for judgeships.

summoned by the county committee. If candidates have to be chosen for local offices, various names are submitted and either accepted without a division or put to the vote, the person who gets most votes being declared chosen to be the party candidate. He is said to have received the party nomination. The selection of delegates to the various conventions is conducted in the same way. The local committee has usually prepared beforehand a list of names of persons to be chosen to serve as delegates, but any voter present may bring forward other names. All names, if not accepted by general consent, are then voted on. At the close of the proceedings the chairman signs the list of delegates chosen to the approaching convention or conventions, if more than one, and adjourns the meeting *sine die*.

The delegates so chosen proceed in due course to their respective conventions, which are usually held a few days after the primaries, and a somewhat longer period before the elections for offices.[1] The convention is summoned by the managing committee for the district it exists for, and when a sufficient number of delegates are present, some one proposes a temporary chairman, or the delegate appointed for the purpose by the committee of the district for which the convention is being held "calls the meeting to order" as temporary chairman. This person names a Committee on Credentials, which forthwith examines the credentials presented by the delegates from the primaries, and admits those whom it deems duly accredited. Then a permanent chairman is proposed and placed in the chair, and the convention

[1] In the case of elections to the Presidency and to the Governorship of a State the interval between the nominating convention and the election is much longer—in the former case about four months.

is held to be "organized," *i.e.* duly constituted. The managing committee have almost always arranged beforehand who shall be proposed as candidates for the party nominations, and their nominees are usually adopted. However, any delegate may propose any person he thinks fit, being a recognized member of the party, and carry him on a vote if he can. The person adopted by a majority of delegates' votes becomes the party candidate, and is said to have "received the nomination." The convention sometimes, but not always, also amuses itself by passing resolutions expressive of its political sentiments; or if it is a State convention or a National convention, it adopts a platform, touching on, rather than dealing with, the main questions of the day. It then, having fulfilled its mission, adjourns *sine die*, and the rest of the election business falls to the managing committee. It must be remembered that primaries and conventions, unlike the local party associations of England, are convoked but once, make their nominations, and vanish.[1] They are swans which sing their one song and die.

The national convention held every fourth year before a presidential election needs a fuller description, which I shall give presently. Meantime three features of the system just outlined may be adverted to.

Every voter belonging to the party in the local area for which the primary is held, is presumably entitled to appear and vote in it. In rural districts, where everybody knows everybody else, there is no difficulty about

[1] It is true that according to what has been sometimes called the "Birmingham system," an English party council in a constituency is renewed every year by a fresh election in the wards. But such a "Three Hundred" is a body permanent during the year, and may be summoned to pass resolutions on some political question, or take such other action as it can.

admission, for if a Democrat came into a Republican primary, or a Republican from North Adams tried to vote in the Republican primary of Lafayetteville, he would be recognized as an intruder and expelled. But in cities where people do not know their neighbours by headmark, it becomes necessary to have regular lists of the party voters entitled to a voice in the primary. These are made up by the local committee, which may exclude persons whom, though they call themselves Republicans (or Democrats, as the case may be), it deems not loyal members of the party. The usual test is, Did the claimant vote the party ticket at the last important election, generally the presidential election, or that for the State governorship? If he did not, he may be excluded. Frequently, however, the local rules of the party require every one admitted to the list of party voters to be admitted by the votes of the existing members, who may reject him at their pleasure, and also exact from each member two pledges, to obey the local committee, and to support the party nominations, the breach of either pledge being punishable by expulsion. In many primaries voters supposed to be disagreeably independent are kept out either by the votes of the existing members or by the application of these strict tests. Thus it happens that three-fourths or even four-fifths of the party voters in a primary area may not be on the list and entitled to raise their voice in the primary for the selection of candidates or delegates. Another regulation, restricting nominations to those who are enrolled members of the regular organization, makes persons so kept off the list ineligible as party candidates.

Every member of a nominating meeting, be it a primary or a convention of delegates, is deemed to be bound by the vote of the majority to support the can-

didate whom the majority select, whether or no an express pledge to that effect has been given. And in the case of a convention a delegate is generally held to bind those whom he represents, *i.e.* the voters at the primary which sent him. Of course no compulsion is possible, but long usage and an idea of fair play have created a sentiment of honour (so-called) and party loyalty strong enough, with most people and in all but extreme cases, to secure for the party candidate the support of the whole party organization in the district.[1] It is felt that the party must be kept together, and that he who has come into the nominating meeting hoping to carry his own candidate must abide by the decision of the majority. The vote of a majority has a sacredness in America not yet reached in Europe.

As respects the freedom left to delegates to vote at their own pleasure or under the instructions of their primary, and to vote individually or as a solid body, the practice is not uniform. Sometimes they are sent up to the nominating convention without instructions, even without the obligation to "go solid." Sometimes they are expressly directed, or it is distinctly understood by them and by the primary, that they are to support the claims of a particular person to be selected as candidate, or that they are at any rate to vote all together for one person. Occasionally they are even given a list arranged in order of preference, and told to vote for A. B., failing him for C. D., failing him for E. F., these being persons whose names have already been mentioned as probable candidates for the nomination. This, however, would only happen in the case of the greater offices, such as those of member of Congress or governor of a State.

[1] The obligation is however much less strict in the case of municipal elections than it is in Federal or State elections.

The point is in practice less important than it seems, because in most cases, whether there be any specific and avowed instruction or not, it is well settled beforehand by those who manage the choice of delegates what candidate any set of delegates are to support, or at least whose lead they are to follow in the nominating convention.

Note further how complex is the machinery needed to enable the party to concentrate its force in support of its candidates for all these places, and how large the number of persons constituting the machinery. Three sets of offices, municipal or county, State, Federal, have to be filled; three different sets of nominating bodies are therefore needed. If we add together all the members of all the conventions included in these three sets, the number of persons needed to serve as delegates will be found to reach a high total, even if some of them serve in more than one convention. Men whose time is valuable will refuse the post of delegate, gladly leaving to others who desire it the duty of selecting candidates for offices to which they seldom themselves aspire. However, as we shall see, such men are but rarely permitted to become delegates, even when they desire the function.

"Why these tedious details," the European reader may exclaim. "Of what consequence can they be compared to the Constitution and laws of the country." Patience. These details have more significance and make more difference to the working of the government than many of the provisions of the Constitution itself. The mariner feels the trade winds which sweep over the surface of the Pacific and does not perceive the coral insects which are at work beneath its waves, but it is by the labour of these insects that islands grow, and reefs are built up on which ships perish.

CHAPTER LXI

WHAT THE MACHINE HAS TO DO

THE system I have described is simple in principle, and would be simple in working if applied in a European country where elective offices are few. The complexity which makes it puzzle many Americans, and bewilder all Europeans, arises from the extraordinary number of elections to which it is applied, and from the way in which the conventions for different election districts cross and overlap one another. A few instances may serve to convey to the reader some impression of this profusion of elections and intricacy of nominating machinery.

In Europe a citizen rarely votes more than twice or thrice a year, sometimes less often, and usually for only one person at a time. Thus in England any householder, say at Manchester or Liverpool, votes once a year for a town councillor (if there is a contest); once in three years for members of a school board (if there is a contest); once in four or five years (on an average) for a member of the House of Commons.[1] Allowing for the

[1] He may also vote once a year for guardians of the poor, but this office is usually so little sought that the election excites slight interest and comparatively few persons vote. The voting is by voting papers left at the voter's house for him to mark. If he goes to a vestry meeting he may, in places where there is a select vestry, vote for its members.

frequent cases in which there is no municipal contest in his ward, he will not on an average vote more than one and a half times each year. It is much the same in Scotland, nor do elections seem to be more frequent in France, Germany, or Italy.

Now compare the elections held to fill offices in the great State of Ohio, which is fairly typical of the older western or middle States. Citizens vote at the polls for the following five sets of offices. For simplicity I take the case of a city instead of a rural district, but the number of elective offices is nearly the same in the latter.[1]

I. FEDERAL OFFICES.—*Election held:—Once in every four years*—Electors of the President of the United States. *Once in every two years*—Members of the House of Representatives of the United States.

II. STATE OFFICES.—*Once in each year*—Member of the Board of Public Works (to serve for three years); Judge of the Supreme Court (to serve for five years). *Once in two years*—Governor of the State of Ohio; Lieutenant-Governor of Ohio; Secretary of State of Ohio; Treasurer of Ohio; Attorney-General of Ohio; State Senators (elected in each Senatorial district); Members of the State House of Representatives (elected in each Representative district). *Once in three years*—State Commissioner of Common Schools; Clerk of the Supreme Court. *Once in four years*—Auditor of the State.

III. DISTRICT OFFICES.—*Once in two years*—Circuit Judge (to serve for six years). *Once in five years*—Judge of the Court of Common Pleas (to serve for five years). *Once in ten years*—Member of the State Board of Equalization.

[1] I have compiled what follows from the *Ohio Voters' Manual*, by W. S. Collins (Cleveland, Ohio, 1884).

IV. COUNTY OFFICES.—*Once in each year*—County Commissioner (to serve for three years); Infirmary Directors (to serve for three years). *Once in two years*—County Treasurer; Sheriff; Coroner. *Once in three years*—County Auditor; Recorder; Surveyor; Judge of Probate; Clerk of Court of Common Pleas; Prosecuting Attorney.

V. CITY OFFICES.—*Once in each year*—Members of the Board of Police Commissioners (in most cities); Members of Board of Infirmary Directors (to serve for three years); Trustee of Water Works (to serve for three years). *Once in two years*—Mayor; City Clerk; Auditor (if any); Treasurer; Solicitor; Police Judge (in large cities); Prosecuting Attorney of the Police Court (in large cities); Clerk of Police Court (in large cities); City Commissioner (in cities of the second class); Marshal (not in the largest cities); Street Commissioner; Civil Engineer (if elected at the polls);[1] Fire Surveyor (if elected at the polls);[1] Superintendent of Markets (if elected at the polls).[1]

I have omitted from the above list—

All offices to which the council of a city appoints, because these are not conferred by popular election.

All unpaid elective offices, although many of these furnish opportunities for gain and influence.[2]

All offices which are found only in one or both of the two great cities of Cincinnati and Cleveland.

This list shows a total of *seven* elections at the polls taking place annually, *twenty-one* to *twenty-six* (accord-

[1] The city council has power to determine whether these officers shall be appointed by them or elected at the polls.

[2] The ward offices are omitted from the above list, because they are usually unpaid, and the township offices because they represent in the rural districts what the ward offices are in the towns. The candidates for ward and township offices are nominated in primaries.

ing to circumstances) taking place biennially, *eight* taking place triennially, *two* quadrennially, *one* quinquennially, *one* decennially,—giving an average in round numbers of twenty-two elections in each year. Of course this does not mean that there are twenty-two separate and distinct elections, for many of the State offices are filled up at one and the same election, as also most of the city offices at one and the same election. It means that there are, on an average, twenty-two different paid offices[1] which a voter has annually to allot by his vote—that is to say, he must in each and every year make up his mind as to the qualifications of twenty-two different persons or sets of persons to fill certain offices. As nearly all these offices are contested on political lines, though the respective principles (if any) of Republicans and Democrats have no more to do with the discharge of the duties of the State and local offices than the respective principles of Methodists and Baptists, nominations to them are made by the respective party organizations. Candidates for all, or nearly all, the above offices are nominated in conventions composed of delegates from primaries. I cannot give the precise number of conventions, but there must be at least seven or eight, although one or two of these will not be held every year. As the areas with their respective conventions overlap, the same primary will in each year send different sets of delegates to as many different nominating conventions, six or seven at least, as there are sets of offices to be filled up in that year. The number and names of the elective offices differ in dif-

[1] If the unpaid offices were included, the average would rise to about twenty-five, and some of these offices (*e.g.* that of Alderman) are fought on political lines because they give influence and patronage. The text therefore understates the case. In some cities the office of alderman is paid, in most it is much sought after.

ferent States of the Union, but the general features of the system are similar.

Let us now take another illustration from Massachusetts, and regard the system from another side by observing how many sets of delegates a primary will have to send to the several nominating conventions which cover the local area to which the primary belongs.[1]

A Massachusetts primary will choose the following sets of persons, including committee-men, candidates, and delegates :—

1. Ward and city committees in cities, and town committees in towns.[2]

2. In cities, candidates for common council ; in towns, candidates for town offices, *i.e.* selectmen, school committee, overseers of poor, town clerk and treasurer, assessors of taxes, etc.

3. In cities, delegates to a convention to nominate city officers.

4. Delegates to a convention to nominate county officers.

5. Candidates for representatives to State legislature, or delegates to a convention to nominate the same.

6. Delegates to a convention for nominating candidates for State Senate.

7. Delegates to a convention for nominating candidates for State Governor's council.

8. Delegates to a convention for nominating candidates for State offices (*e.g.* Governor, Lieutenant-Governor, etc.)

The above are annual. Then every two years—

9. Delegates to a congressional district convention for nominating candidates for representatives to Congress.

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[1] I owe the following list, and the explanatory note at the end of the volume to the kindness of a friend in Massachusetts (Mr. G. Bradford of Cambridge), who has given much attention to the political methods of his country.

[2] A "town" in New England is the unit of local government corresponding to the township of the Middle and Western States. It is a rural not an urban area. See Chapter XLVIII. *ante.*

Then every four years—

10. Delegates to a district convention for nominating other delegates (corresponding to the members of Congress) to the national Presidential Convention of the party; and

11. Delegates to a general convention for nominating four delegates at large (corresponding to United States senators) to national Presidential Convention.[1]

In New York City there are usually from one hundred and sixty to two hundred candidates to be voted for at the November elections, even when the year is not one of those when presidential electors are chosen; and all these have been nominated at primaries or conventions. But I need not weary the reader with further examples, for the facts above stated are fairly illustrative of what goes on over the whole Union.

It is hard to keep one's head through this mazy whirl of offices, elections, and nominating conventions. In America itself one finds few ordinary citizens who can state the details of the system, though these are of course familiar to professional politicians.

The first thing that strikes a European who contemplates this organization is the great mass of work it has to do. In Ohio, for instance, there are, if we count in such unpaid offices as are important in the eyes of politicians, on an average some thirty offices to be filled annually by election. Primaries or conventions have to select candidates for all of these. Managing committees have to organize the primaries, "run" the conventions, conduct the elections. Here is ample occupation for a class of professional men.

What are the results which one may expect this abundance of offices and elections to produce?

[1] See further the note to this chapter in Appendix to this volume on the managing and nominating party organizations of Massachusetts.

The number of delegates needed being large, since there are so many conventions, it will be hard to find an adequate number of men of any mark or superior intelligence to act as delegates. The bulk will be persons unlikely to possess, still more unlikely to exercise, a careful or independent judgment. The functions of delegate being in the case of most conventions humble and uninteresting, because the offices are unattractive to good men, persons whose time is valuable will not, even if they do exist in sufficient numbers, seek it. Hence the best citizens, *i.e.* the men of position and intelligence, will leave the field open to inferior persons who have any private or personal reason for desiring to become delegates. I do not mean to imply that there is necessarily any evil in this as regards most of the offices, but mention the fact to explain why few men of good social position think of the office of delegate, except to the National Convention once in four years, as one of trust or honour.

The number of places to be filled by election being very large, ordinary citizens will find it hard to form an opinion as to the men best qualified for the offices. Their minds will be distracted among the multiplicity of places. In large cities particularly, where people know little about their neighbours, the names of most candidates will be unknown to them, and there will be no materials, except the recommendation of a party organization, available for determining the respective fitness of the candidates put forward by the several parties.

Most of the elected officials are poorly paid. Of those above enumerated in Ohio, none, not even the governor, receives more than $4000 (£800) a year, the majority very much less. The duties of most offices

require no conspicuous ability, but can be discharged by any honest man of good sense and business habits. Hence they will not be sought by persons of ability and energy, because such persons can do better for themselves in private business; it will be hard to say which of many candidates is the best; the selection will rouse little stir among the people at large.

Those who have had experience of public meetings know that to make them go off well, it is as desirable to have the proceedings prearranged as it is to have a play rehearsed. You must select beforehand not only your chairman, but also your speakers. Your resolutions must be ready framed; you must be prepared to meet the case of an adverse resolution or hostile amendment. This is still more advisable where the meeting is intended to transact some business, instead of merely expressing its opinion; and when certain persons are to be selected for any duty, prearrangement becomes not merely convenient but indispensable in the interests of the meeting itself, and of the business which it has to despatch. "Does not prearrangement practically curtail the freedom of the meeting?" Certainly it does. But the alternative is confusion and a hasty unconsidered decision. Crowds need to be led; if you do not lead them they will go astray, will follow the most plausible speaker, will break into fractions and accomplish nothing. Hence if a primary is to discharge properly its function of selecting candidates for office or a number of delegates to a nominating convention, it is necessary to have a list of candidates or delegates settled beforehand. And for the reasons already given, the more numerous the offices and the delegates, and the less important the duties they have to discharge, so much the more necessary is it to have

such lists settled; and so much the more likely to be accepted by those present is the list proposed.

The reasons have already been stated which make the list of candidates put forth by a primary or by a nominating convention carry great weight with the voters. They are the chosen standard-bearers of the party. A European may remark that the citizens are not bound by the nomination; they may still vote for whom they will. If a bad candidate is nominated, he may be passed over. That is easy enough where, as in England, there are only one or two offices to be filled at an election, where these few offices are important enough to excite general interest, and where therefore the candidates are likely to be men of mark. But in America the offices are numerous, they are mostly unimportant, and the candidates are usually obscure. Accordingly guidance is eagerly welcomed, and the party as a whole votes for the person who receives the party nomination from the organization authorized to express the party view. Hence the high importance attached to "getting the nomination"; hence the care bestowed on constructing the nominating machinery; hence the need for prearranging the lists of delegates to be submitted to the primary, and of candidates to come before the convention.

I have sought in this chapter firstly to state how the nominating machine is constituted, and what work it has to do, then to suggest some of the consequences which the quantity and nature of that work may be expected to entail. We may now go on to see how the work turns out in practice to be done.

CHAPTER LXII

HOW THE MACHINE WORKS

NOTHING seems fairer or more conformable to the genius of democratic institutions than the system I have described, whereby the choice of party candidates for office is vested in the mass of the party itself. The existence of a method which selects the candidate likely to command the greatest support prevents the dissension and consequent waste of strength which the appearance of rival candidates of the same party involves; while the popular character of that method excludes the dictation of a clique, and recognizes the sovereignty of the people. It is a method simple, uniform, and agreeable throughout to its leading principle.

To understand how it actually works one must distinguish between two kinds of constituencies or voting areas. One kind is to be found in the great cities—places whose population exceeds, speaking roughly, 100,000 souls, of which there are now about thirty in the Union. The other kind includes constituencies in small cities and rural districts. What I have to say will refer chiefly to the Northern States—*i.e.* the former Free States, because the phenomena of the Southern States are still exceptional, owing to the vast population of ignorant negroes, among whom the whites, or rather the better sort of whites, still stand as an aristocracy.

The tests by which one may try the results of the system of selecting candidates are two. Is the choice of candidates for office really free—*i.e.* does it represent the unbiassed wish and mind of the voters generally? Are the offices filled by good men, men of probity and capacity sufficient for the duties?

In the country generally, *i.e.* in the rural districts and small cities, both these tests are tolerably well satisfied. It is true that many of the voters do not attend the primaries. The selection of delegates and candidates is left to be made by that section of the population which chiefly interests itself in politics; and in this section local attorneys and office-seekers have much influence. The persons who seek the post of delegate, as well as those who seek office, are seldom the most energetic and intelligent citizens; but that is because these men have something better to do. An observer from Europe who looks to see men of rank and culture holding the same place in State and local government as they do in England, especially rural England, or in Italy, or even in parts of rural France and Switzerland (one cannot explain these things except by comparisons), will be disappointed. But democracies must be democratic. Equality will have its perfect work; and you cannot expect citizens who are pervaded by its spirit to go cap in hand to their richer neighbours begging them to act as delegates, or city or county officials, or congressmen. This much may be said, that although there is in America no difference of rank in the European sense, superior wealth or intelligence does not prejudice a man's candidature, and in most places improves its chances. If such men are not commonly chosen, it is for the same reason which makes them comparatively scarce among the town-councillors of English municipalities.

In these primaries and conventions the business is always prearranged—that is to say, the local party committee come prepared with their list of delegates or candidates. This list is usually, but not invariably, accepted, or if serious opposition appears, alterations may be made to disarm it and preserve the unity of the party. The delegates and candidates chosen are generally the members of the local committee, their friends or creatures. Except in very small places, they are rarely the best men. But neither are they the worst. In moderately-sized communities men's characters are known, and the presence of a bad man in office brings on his fellow-citizens evils which they are not too numerous to feel individually. Hence tolerable nominations are made, the general sentiment of the locality is not outraged; and although the nominating machinery is worked rather in the name of the people than by the people, the people are willing to have it so, knowing that they can interfere if necessary to prevent serious harm.

In large cities the results are different because the circumstances are different. We find there, besides the conditions previously enumerated, viz. numerous offices, frequent elections, universal suffrage, an absence of stimulating issues, three others of great moment—

A vast population of ignorant immigrants.

The leading men all intensely occupied with business.

Communities so large that people know little of one another, and that the interest of each individual in good government is comparatively small.

Any one can see how these conditions affect the problem. The immigrants vote, that is, they obtain votes after three or four years' residence at most, and often less, but they are not fit for the suffrage.[1]

[1] Federal law prescribes a residence of five years as the pre-requisite

They know nothing of the institutions of the country, of its statesmen, of its political issues. Neither from Germany nor from Ireland do they bring much knowledge of the methods of free government, and from Ireland they bring a suspicion of all government. Incompetent to give an intelligent vote, but soon finding that their vote has a value, they fall into the hands of the party organizations, whose officers enrol them in their lists, and undertake to fetch them to the polls. I was taken to watch the process of admitting to citizenship in New York. Droves of squalid men, who looked as if they had just emerged from an emigrant ship, and had perhaps done so only a few weeks before, for the law prescribing a certain term of residence is frequently violated, were brought up to a magistrate by the ward agent of the party which had captured them, declared their allegiance to the United States, and were forthwith placed on the roll. Such a sacrifice of common sense to abstract principles has seldom been made by any country. Nobody pretends that such persons are fit for civic duty, or will be dangerous if kept for a time in pupilage, but neither party will incur the odium of proposing to exclude them. The real reason for admitting them, besides democratic theory, was that the party which ruled New York expected to gain their votes.[1] It is an afterthought to argue that they will sooner become good citizens by being immediately made full citizens. A stranger must not presume to say that the Americans have been imprudent, but he may doubt whether the possible ultimate gain compensates the direct and certain danger.

for naturalization, but the term which enables a vote to be acquired is often shorter under State laws.

[1] At one time a speedy admission to citizenship was adopted as an inducement to immigrants; but this motive has ceased to have force in most States.

In these great transatlantic cities, population is far less settled and permanent than in the cities of Europe. In New York, Brooklyn, Chicago, St. Louis, San Francisco, a very small part of the inhabitants are natives of the city, or have resided in it for twenty years. Hence they know but little of one another, or even of those who would in Europe be called the leading men. There are scarcely any old families, families associated with the city,[1] whose name recommends one of their scions to the confidence of his fellow-citizens. There are few persons who have had any chance of becoming generally known, except through their wealth; and the wealthy have neither time nor taste for political work. Political work is a bigger and heavier affair than in small communities: hence ordinary citizens cannot attend to it in addition to their regular business. Moreover, the population is so large that an individual citizen feels himself a drop in the ocean. His power of affecting public affairs by his own intervention seems insignificant. His pecuniary loss through over-taxation, or jobbery, or malversation, is trivial in comparison with the trouble of trying to prevent such evils.

As party machinery is in great cities most easily perverted, so the temptation to pervert it is there strongest, because the prizes are great. The offices are well paid, the patronage is large, the opportunities for jobs, commissions on contracts, pickings, and even stealings, are enormous. Hence it is well worth the while of unscrupulous men to gain control of the machinery by which these prizes may be won.[2]

[1] In New York and Boston a few such families still exist, but their members do not often enter "politics."

[2] Although what is here stated is generally true of Machines in large cities, there may be, even in such cities, districts inhabited by well-to-do people, in which the political organizations, being composed of men of

Such men, the professional politicians of the great cities, have two objects in view. One is to seize the local city and county offices. A great city of course controls the county in which it is situate. The other is so to command the local party vote as to make good terms with the party managers of the State, and get from them a share in State offices, together with such legislation as is desired from the State legislature, and similarly to make good terms with the Federal party managers, thus securing a share in Federal offices, and the means of influencing legislation in Congress. How do the city professionals move towards these objects?

There are two stages in an election campaign. The first is to nominate the candidates you desire: the second to carry them at the polls. The first of these is often the more important, because in many cities the party majority inclines so decidedly one way or the other (*e.g.* New York City is steadily Democratic, Philadelphia Republican), that nomination is in the case of the dominant party equivalent to election. Now to nominate your candidates you must, above all things, secure the primaries. They require and deserve unsparing exertion, for everything turns upon them.

The first thing is to have the kind of primary you want. Now the composition of a primary is determined by the roll or "check list," as it is called, of ward voters entitled to appear in it. This is prepared by the managing committee of the ward, who are naturally desirous to have on it only such men as they can trust or control. They are aided in securing this by the rules requiring members to be admitted by the votes of those already on the list, and exacting from persons admitted a pledge

good character and standing, are honestly worked. The so-called "brownstone districts" in New York City have, I believe, good Machines.

to obey the committee, and abide by the party nominations.[1] Men of independent temper often refuse this pledge, and are excluded. Many of the ward voters do not apply for admission. Of those who do apply and take the pledge, some can be plausibly rejected by the primary on the ground that they have on some recent occasion failed to vote the party ticket. Thus it is easy for an active committee to obtain a subservient primary, composed of persons in sympathy with it or obedient to it. In point of fact the rolls of membership of many primaries are largely bogus rolls. Names of former members are kept on when these men have left the district or died: names are put on of men who do not belong to the district at all, and both sets of names are so much "voting stock," applicable at the

[1] The rules of the Tammany Hall (Democratic) organization in New York City have, for many years past, made the consent of a majority of the members of each primary necessary to the admission of a new member. A similar system seems to have been adopted by the Republican party in that city. "The organization of the twenty-four Republican primaries (one for each Assembly district) is as complicated, and the access to membership as difficult, as that of any private club. The name of the applicant must be posted on a bulletin, and there stand until the next monthly meeting before it can even go to the committee on admissions. If favourably reported, it must yet gain a majority of those present at a monthly meeting of the primary; a result quite problematical, if the pliant obedience of the candidate is not made clear, or if he is not a member of the faction, or the follower of the boss dominant in his primary; and his application must be to the primary of his district. If he secures a majority he must yet not only take in substance the old Tammany pledge, 'to obey all orders of the general committee' (whose action is secret), and 'to support all nominations approved by that committee,' but he must also bind himself not to join any organization which does not recognize the authority of the primary association he seeks to join! This is of course intended to prevent all movements for reform. If elected, he may at any time be expelled by a majority of the members at any meeting of the association, if he is held to have violated any of those pledges. After an expulsion he can get back only by a vote of the primary. Such is the liberty of a member. The servile conditions of membership have repelled the better class of citizens."—Mr. D. B. Eaton, in *Amer. Cyclop. of Polit. Science*, art. "Primary Elections." The Republicans have, however, within the last two years reformed this system.

will and needs of the local party managers, who can admit the latter to vote, and recognize men personating the former. In fact, their control of the lists enables them to have practically whatever primary they desire.[1]

The next thing is to get the delegates chosen whom you wish for. The committee when it summons the primary settles in secret conclave the names of the delegates to be proposed, of course selecting men it can trust, particularly office-holders bound to the party which has put them in, and "workers" whom the prospect of office will keep faithful. When the meeting assembles a chairman is suggested by the committee and usually accepted. Then the list of delegates, which the committee has brought down cut and dry, is put forward. If the meeting is entirely composed of professionals, office-holders, and their friends, it is accepted without debate. If opponents are present, they may propose other names, but the official majority is almost always sufficient to carry the official list, and the chairman is prepared to exert, in favour of his friends, his power of ruling points of order. In extreme cases a disturbance will be got up, in the midst of which the chairman may plausibly declare the official list carried, or

[1] In 1880 it was computed that out of 58,000 Republican voters in New York City not more than 6000, or 8000 at most, were members of the Republican organization, and entitled to vote in a primary.

The numbers present in a primary are sometimes very small. "At the last Republican primaries in New York City only 8 per cent of the Republican electors took part. In only eight out of twenty-four districts did the percentage exceed 10, in some it was as low as 2 per cent. In the Twenty-first Assembly District Tammany Primary, 116 delegates, to choose an Assembly candidate, were elected by less than fifty voters. In the Sixth Assembly District County Democracy Primary, less than 7 per cent of the Democratic voters took part, and of those who did, sixty-nine in number, nearly one-fourth were election officers. The primary was held in a careless way in a saloon while card-playing was going on." —Mr. A. C. Bernheim in *Pol. Science Quarterly* for March 1888.

the meeting is adjourned in the hope that the opposition will not be at the trouble of coming next time, a hope likely to be realized, if the opposition consists of respectable citizens who dislike spending an evening in such company. Sometimes the professionals will bring in roughs from other districts to shout down opponents, and if necessary threaten them with violence. One way or another the "official" or committee's list of delegates is almost invariably carried.

The scene now shifts to the Nominating Convention, which is also summoned by the appropriate committee. When it is "called to order" a temporary chairman is installed, the importance of whose position consists in his having (usually) the naming of a committee on credentials, or contested seats, which examines the titles of the delegates from the various primaries to vote in the convention. Being himself in the interest of the professionals, he names a committee in their interest, and this committee does what it can to exclude delegates who are suspected of an intention to oppose the candidates whom the professionals have prearranged. The primaries have almost always been so carefully packed, and so skilfully "run," that a majority of trusty delegates has been secured; but sometimes a few primaries have sent delegates belonging to another faction of the party, or to some independent section of the party, and then there may be trouble. Occasionally two sets of delegates appear, each claiming to represent their primary. The dispute generally ends by the exclusion of the Independents or of the hostile faction, the committee discovering a flaw in their credentials, but sometimes, though rarely, the case is so clear that they must be admitted. In doubtful cases a partisan chairman is valuable, for, as it is expressed, "he is a solid

8 to 7 man all the time." When the credentials have been examined the convention is deemed to be duly organized, a permanent chairman is appointed, and the business of nominating candidates proceeds. A spokesman of the professionals proposes A. B. in a speech, dwelling on his services to the party. If the convention has been properly packed, he is nominated by acclamation. If there be a rival faction represented, or if independent citizens who dislike him have been sent up by some primary which the professionals have failed to secure, another candidate is proposed and a vote taken. Here also there is often room for a partial chairman to influence the result; here, as in the primary, a tumult or a hocus pocus may in extreme cases be got up to enable the chairman to decide in favour of his allies.

Americans are, however, so well versed in the rules which govern public meetings, and so prepared to encounter all sorts of tricks, that the managers do not consider success certain unless they have a majority behind them. This they almost certainly have; at least it reflects discredit on their handling of the primaries if they have not. The chief hope of an opposition therefore is not to carry its own candidate but so to frighten the professionals as to make them abandon theirs, and substitute some less objectionable name. The candidate chosen, who, ninety-nine times out of a hundred, is the person predetermined by the managers, becomes the party nominee, entitled to the support of the whole party. He has received "the regular nomination." If there are other offices whereto nominations have to be made, the convention goes on to these, which being despatched, it adjourns and disappears for ever.

I once witnessed such a convention, a State convention, held at Rochester, N.Y., by the Democrats of

New York State, at that time under the control of the Tammany Ring of New York City. The most prominent figure was the famous Mr. William M. Tweed, then in the zenith of his power. There was, however, little or nothing in the public proceedings from which an observer could learn anything of the subterranean forces at work. During the morning, a tremendous coming and going and chattering and clattering of crowds of men who looked at once sordid and flashy, faces shrewd but mean and sometimes brutal, vulgar figures in good coats forming into small groups and talking eagerly, and then dissolving to form fresh groups, a universal *camaraderie*, with no touch of friendship about it; something between a betting-ring and the flags outside the Liverpool Exchange. It reminded one of the swarming of bees in tree boughs, a ceaseless humming and buzzing which betokens immense excitement over proceedings which the bystander does not comprehend. After some hours all this settled down; the meeting was duly organized: speeches were made, all dull and thinly declamatory, except one by an eloquent Irishman; the candidates for State offices were proposed and carried by acclamation: and the business ended. Everything had evidently been prearranged; and the discontented, if any there were, had been talked over during the swarming hours.

After each of the greater conventions it is usual to hold one or more public gatherings, at which the candidates chosen are solemnly adopted by the crowd present, and rousing speeches are delivered. Such a gathering is called a "ratification" meeting. It has no practical importance, being of course attended only by those prepared to support the nominations made. The candidate is now launched, and what remains is to win the election.

The above may be thought, as it is thought by many

Americans, a travesty of popular choice.[1] Observing the forms of consulting the voters, it substantially ignores them, and forces on them persons whom they do not know, and would dislike if they knew them. It substitutes for the party voters generally a small number of professionals and their creatures, extracts prearranged nominations from packed meetings, and calls this consulting the pleasure of the sovereign people.

Yet every feature of the Machine is the result of patent causes. The elective offices are so numerous that ordinary citizens cannot watch them, and cease to care who gets them. The conventions come so often that busy men cannot serve in them. The minor offices are so unattractive that able men do not stand for them. The primary lists are so contrived that only a fraction of the party get on them; and of this fraction many are too lazy or too busy or too careless to attend. The mass of the voters are ignorant; knowing nothing about the personal merits of the candidates, they are ready to follow their leaders like sheep. Even the better class, however they may grumble, are swayed by the inveterate habit of party loyalty, and prefer a bad candidate of their own party to a (probably no better) candidate of the other party. It is less trouble to put up with impure officials, costly city government, a jobbing State legislature, an inferior sort of congressman, than to sacrifice one's own business in the effort to set things right. Thus the Machine works on, and grinds out places, power, and the opportunities for illicit gain to those who manage it.

[1] Governor Cornell wrote in 1871 (being then chairman of the Republican State Committee) of the primaries of New York City, "The elections of delegates in nearly all of the districts were mere farces."

CHAPTER LXIII

RINGS AND BOSSES

THIS is the external aspect of the Machine; these the phenomena which a visitor taken round to see a number of Primaries and Nominating Conventions would record. But the reader will ask, How is the Machine run? What are the inner springs that move it? What is the source of the power the committees wield? What force of cohesion keeps leaders and followers together? What kind of government prevails among this army of professional politicians?

The source of power and the cohesive force is the desire for office, and for office as a means of gain. This one cause is sufficient to account for everything, when it acts, as it does in these cities, under the condition of the suffrage of a host of ignorant and pliable voters.

Those who in great cities form the committees and work the machine are persons whose chief aim in life is to make their living by office. Such a man generally begins by acquiring influence among a knot of voters who live in his neighbourhood, or work under the same employer, or frequent the same grog-shop or beer saloon, which perhaps he keeps himself. He becomes a member of his primary, attends regularly, attaches himself to some leader in that body, and is forward to render

service by voting as his leader wishes, and by doing duty at elections. He has entered the large and active class called, technically, "workers," or more affectionately, "the Boys." Soon he becomes conspicuous in the primary, being recognized as controlling the votes of others—"owning them" is the technical term—and is chosen delegate to a convention. Loyalty to the party there and continued service at elections mark him out for further promotion. He is appointed to some petty office in one of the city departments, and presently is himself nominated for an elective office. By this time he has also found his way on to the ward committee, whence by degrees he rises to sit on the central committee, having carefully nursed his local connection and surrounded himself with a band of adherents, who are called his "heelers," and whose loyalty to him in the primary, secured by the hope of "something good," gives weight to his words. Once a member of the central committee he discovers what everybody who gets on in the world discovers sooner or later, by how few persons the world is governed. He is one of a small knot of persons who pull the wires for the whole city, controlling the primaries, selecting candidates, "running" conventions, organizing elections, treating on behalf of the party in the city with the leaders of the party in the State. Each of this knot, which is probably smaller than the committee, because every committee includes some ciphers put on to support a leader, and which may include one or two strong men not on the committee, has acquired in his upward course a knowledge of men and their weaknesses, a familiarity with the wheels, shafts, and bands of the party machine, together with a skill in working it. Each can command some primaries, each has attached to himself a group of

dependants who owe some place to him, or hope for some place from him. The aim of the knot is not only to get good posts for themselves, but to rivet their yoke upon the city by garrisoning the departments with their own creatures, and so controlling elections to the State legislature that they can procure such statutes as they desire, and prevent the passing of statutes likely to expose or injure them. They cement their dominion by combination, each placing his influence at the disposal of the others, and settle all important measures in secret conclave.

Such a combination is called a Ring.

The power of such a combination is immense, for it ramifies over the whole city. There are, in New York City, for instance, over ten thousand persons employed by the city authorities, all dismissible by their superiors at short notice and without cause assigned. There are two thousand five hundred persons employed in the Custom-House, Post-Office, and other branches of the Federal service, most of whom are similarly dismissible by the proper Federal authority;[1] and there are also State servants, responsible to and dismissible by the State authority. If the same party happens to be supreme in city politics, in the Federal government, and in the State government, all this army of employés is expected to work for the party leaders of the city, in city primaries conventions and elections, and is virtually amenable to the orders of these leaders.[2] If the other party holds the reins of Federal government, or of both the Federal government and State government, then the city wire-pullers have at any rate their own ten thousand or more,

[1] Mr. Dorman B. Eaton, late one of the Federal Civil Service Commissioners, in article "Primary," in the *Amer. Cyclop. of Polit. Science.*

[2] Assuming, as one usually may, that the city leaders are on good terms with the Federal and State party managers.

while other thousands swell the army of "workers" for the opposite party. Add those who expect to get offices, and it will be seen how great and how disciplined a force is available to garrison the city and how effective it becomes under strict discipline. Yet it is not larger than is needed, for the work is heavy. *Tantae molis erat Romanam condere gentem.*

In a Ring there is usually some one person who holds more strings in his hand than do the others. Like them he has worked himself up to power from small beginnings, gradually extending the range of his influence over the mass of workers, and knitting close bonds with influential men outside as well as inside politics, perhaps with great financiers or railway magnates, whom he can oblige, and who can furnish him with funds. At length his superior skill, courage, and force of will make him, as such gifts always do make their possessor, dominant among his fellows. An army led by a council seldom conquers: it must have a commander-in-chief, who settles disputes, decides in emergencies, inspires fear or attachment. The head of the Ring is such a general. He dispenses places, rewards the loyal, punishes the mutinous, concocts schemes, negotiates treaties. He generally avoids publicity, preferring the substance to the pomp of power, and is all the more dangerous because he sits, like a spider, hidden in the midst of his web. He is a Boss.

Although the career I have sketched is that whereby most Bosses have risen to greatness, some attain it by a shorter path. There have been brilliant instances of persons stepping at once on to the higher rungs of the ladder in virtue of their audacity and energy, especially if coupled with oratorical power. The first theatre of such a man's successes may have been the stump rather

than the primary: he will then become potent in conventions, and either by hectoring or by plausible address, for both have their value, spring into popular favour, and make himself necessary to the party managers. It is of course a gain to a Ring to have among them a man of popular gifts, because he helps to conceal the odious features of their rule, gilding it by his rhetoric, and winning the applause of the masses who stand outside the circle of workers. However, the position of the rhetorical boss is less firmly rooted than that of the intriguing boss, and there have been instances of his suddenly falling to rise no more.

A great city is the best soil for the growth of a Boss, because it contains the largest masses of manageable voters as well as numerous offices, and plentiful opportunities for jobbing. But a whole State sometimes falls under the dominion of one intriguer. To govern so large a territory needs high abilities; and the State boss is always an able man, somewhat more of a politician, in the European sense, than a city boss need be. He dictates State nominations, and through his lieutenants controls State and sometimes Congressional conventions, being in diplomatic relations with the chief city bosses and local rings in different parts of the State. His power over them mainly springs from his influence with the Federal executive and in Congress. He is usually, almost necessarily, a member of Congress, probably a senator, and can procure, or at any rate can hinder, such legislation as the local leaders desire or dislike. The President cannot ignore him, and the President's ministers, however little they may like him, find it worth while to gratify him with Federal appointments for persons he recommends, because the local votes he controls may make all the difference to their

own prospects of getting some day a nomination for the presidency. Thus he uses his Congressional position to secure State influence, and his State influence to strengthen his Federal position. Sometimes however he is rebuffed by the powers at Washington and then his State thanes fly from him. Sometimes he quarrels with a powerful city boss, and then honest men come by their own.

It must not be supposed that the members of Rings, or the great Boss himself, are wicked men. They are the offspring of a system. Their morality is that of their surroundings. They see a door open to wealth and power, and they walk in. The obligations of patriotism or duty to the public are not disregarded by them, for these obligations have never been present to their minds. A State boss is usually a native American and a person of some education, who avoids the grosser forms of corruption, though he has to wink at them when practised by his friends. He may be a man of personal integrity.[1] A city boss is often of foreign birth and humble origin; he has grown up in an atmosphere of oaths and cocktails: ideas of honour and purity are as strange to him as ideas about the nature of the currency and the incidence of taxation: politics is merely a means for getting and distributing places. "What," said an ingenuous delegate at one of the National Conventions at Chicago in 1880, "what are we here for except the offices?" It is no wonder if he helps himself from the city treasury and allows his minions to do so. Sometimes he does not rob, and, like Clive, wonders at his own moderation. And even he improves as he rises in the world. Like a

[1] So too a rural boss is often quite pure, and blameworthy rather for his intriguing methods than for his aims.

tree growing out of a dust heap, the higher he gets, the cleaner do his boughs and leaves become. America is a country where vulgarity is scaled off more easily than in England, and where the general air of good nature softens the asperities of power. Some city bosses are men from whose decorous exterior and unobtrusive manners no one would divine either their sordid beginnings or their noxious trade. As for the State boss, whose talents are probably greater to begin with, he must be of very coarse metal if he does not take a polish from the society of Washington.

A city Ring works somewhat as follows. When the annual or biennial city or State elections come round, its members meet to discuss the apportionment of offices. Each may desire something for himself, unless indeed he is already fully provided for, and anyhow desires something for his friends. The common sort are provided for with small places in the gift of some official, down to the place of a policeman or doorkeeper or messenger, which is thought good enough for a common "ward worker." Better men receive clerkships or the promise of a place in the custom-house or post-office to be obtained from the Federal authorities. Men still more important aspire to the elective posts, seats in the State legislature, a city aldermanship or commissionership, perhaps even a seat in Congress. All the posts that will have to be filled at the coming elections are considered with the object of bringing out a party ticket, *i.e.* a list of candidates to be supported by the party at the polls when its various nominations have been successfully run through the proper conventions. Some leading man, or probably the Boss himself, sketches out an allotment of places; and when this allotment has been worked out fully, it results in a

Slate, *i.e.* a complete draft list of candidates to be proposed for the various offices.[1] It may happen that the slate does not meet everybody's wishes. Some member of the ring or some local boss—most members of a ring are bosses each in his own district, as the members of a cabinet are heads of the departments of state, or as the cardinals are bishops of dioceses near Rome and priests and deacons of her parish churches—may complain that he and his friends have not been adequately provided for, and may demand more. In that case the slate will probably be modified a little to ensure good feeling and content; and will then be presented to the Convention.

But there is sometimes a more serious difficulty to surmount. A party in a State or city may be divided into two or more factions. Success in the election will be possible only by uniting these factions upon the same nominees for office. Occasionally the factions may each make its list and then come together in the party convention to fight out their differences. But the more prudent course is for the chiefs of each faction to arrange matters in a private conference. Each comes wishing to get the most he can for his clansmen, but feels the need for a compromise. By a process of "dickering" (*i.e.* bargaining by way of barter), various offers and suggestions being made all round, a list is settled on which the high contracting

[1] A pleasant story is told of a former Boss of New York State, who sat with his vassals just before the convention, preparing the Slate. There were half a dozen or more State offices for which nominations were to be made. The names were with deliberation selected and set down, with the exception of the very unimportant place of State Prison Inspector. One of his subordinates ventured to call the attention of the Boss to what he supposed to be an inadvertence, and asked who was to be the man for that place, to which the great man answered, with an indulgent smile, "I guess we will leave *that* to the convention."

parties agree. This is a Deal, or Trade, a treaty which terminates hostilities for the time, and brings about "harmony." The list so settled is now a Slate, unless some discontented magnate objects and threatens to withdraw. To do so is called "breaking the slate." If such a "sore-head" persists, a schism may follow, with horrible disaster to the party; but usually a new slate is prepared and finally agreed upon. The accepted Slate is now ready to be turned by the Machine into a Ticket, and nothing further remains but the comparatively easy process of getting the proper delegates chosen by packed primaries, and running the various parts of the ticket through the conventions to which the respective nominations belong. Internal dissension among the chiefs is the one great danger; the party must at all hazards be kept together, for the power of a united party is enormous. It has not only a large but a thoroughly trained and disciplined army in its office-holders and office-seekers; and it can concentrate its force upon any point where opposition is threatened to the regular party nominations.[1] All these office-holders and office-seekers have not only the spirit of self-interest to rouse them, but the bridle of fear to check any stirrings of independence. Discipline is very strict in this army. Even city politicians must have a moral code and moral standard. It is not the code of an ordinary unprofessional citizen. It does not forbid falsehood, or malversation, or ballot stuffing, or "repeating." But it denounces apathy or cowardice, disobedience, and above all, treason to the party. Its typical virtue is "solidity," unity of heart, mind, and

[1] As for instance by packing the primaries with its adherents from other districts, whom a partisan chairman or committee will suffer to be present and perhaps to vote.

effort among the workers, unquestioning loyalty to the party leaders, and devotion to the party ticket. He who takes his own course is a Kicker or Bolter; and is punished not only sternly but vindictively. The path of promotion is closed to him; he is turned out of the primary, and forbidden to hope for a delegacy to a convention; he is dismissed from any office he holds which the Ring can command. Dark stories are even told of a secret police which will pursue the culprit who has betrayed his party, and of mysterious disappearances of men whose testimony against the Ring was feared. Whether there is any foundation for such tales I do not undertake to say. But true it is that the bond between the party chiefs and their followers is very close and very seldom broken. What the client was to his patron at Rome, what the vassal was to his lord in the Middle Ages, that the heelers and workers are to their boss in these great transatlantic cities. They render a personal feudal service, which their suzerain repays with the gift of a livelihood; and the relation is all the more cordial because the lord bestows what costs him nothing, while the vassal feels that he can keep his post only by the favour of the lord.

European readers must again be cautioned against drawing for themselves too dark a picture of the Boss. He is not a demon. He is not regarded with horror even by those "good citizens" who strive to shake off his yoke. He is not necessarily either corrupt or mendacious, though he grasps at place, power, and wealth. He is a leader to whom certain peculiar social and political conditions have given a character dissimilar from the party leaders whom Europe knows. It is worth while to point out in what the dissimilarity consists.

A Boss needs fewer showy gifts than a European

demagogue. His special theatre is neither the halls of the legislature nor the platform, but the committee-room. A power of rough and ready repartee, or a turn for florid declamation, will help him; but he can dispense with both. What he needs are the arts of intrigue and that knowledge of men which teaches him when to bully, when to cajole, whom to attract by the hope of gain, whom by appeals to party loyalty. Nor are so-called "social gifts" unimportant. The lower sort of city politicians congregate in clubs and bar-rooms; and as much of the cohesive strength of the smaller party organizations arises from their being also social bodies, so also much of the power which liquor dealers exercise is due to the fact that "heelers" and "workers" spend their evenings in drinking places, and that meetings for political purposes are held there. Of the 1007 primaries and conventions of all parties held in New York City preparatory to the elections of 1884, 633 took place in liquor saloons. A Boss ought therefore to be hail fellow well met with those who frequent these places, not fastidious in his tastes, fond of a drink and willing to stand one, jovial in manners, and ready to oblige even a humble friend.

The aim of a Boss is not so much fame as power, and not so much power over the conduct of affairs as over persons. Patronage is the sort of power he seeks, patronage understood in the largest sense in which it covers the disposal of lucrative contracts and other modes of enrichment as well as salaried places. The dependants who surround him desire wealth, or at least a livelihood; his business is to find this for them, and in doing so he strengthens his own position.[1] It is as the

[1] "A Boss is able to procure positions for many of his henchmen on horse-railroads, the elevated roads, quarry works, etc. Great corporations

bestower of riches that he holds his position, like the leader of a band of condottieri in the fifteenth century.

The interest of a Boss in political questions is usually quite secondary. Here and there one may be found who is a politician in the European sense, who, whether sincerely or not, purports and professes to be interested in some principle or measure affecting the welfare of the country. But the attachment of the ringster is usually given wholly to the concrete party, that is to the men who compose it, regarded as office-holders or office-seekers; and there is often not even a profession of zeal for any party doctrine. As a noted politician happily observed to a friend of mine, "You know, Mr. R., there are no politics in politics." Among bosses, therefore, there is little warmth of party spirit. The typical boss regards the boss of the other party much as counsel for the plaintiff regards counsel for the defendant. They are professionally opposed, but not necessarily personally hostile. Between bosses there need be no more enmity than results from the fact that the one has got what the other wishes to have. Accordingly it sometimes happens that there is a good understanding between the chiefs of opposite parties in cities; they will even go the length of making (of course secretly) a joint "deal," *i.e.* of arranging for a distribu-

are peculiarly subject to the attacks of demagogues, and they find it greatly to their interest to be on good terms with the leader in each district who controls the vote of the assemblyman and alderman; and therefore the former is pretty sure that a letter of recommendation from him on behalf of any applicant for work will receive most favourable consideration. The leader also is continually helping his supporters out of difficulties, pecuniary and otherwise: he lends them a dollar now and then, helps out, when possible, such of their kinsmen as get into the clutches of the law, gets a hold over such of them as have done wrong and are afraid of being exposed, and learns to mix bullying judiciously with the rendering of service." — Mr. Theodore Roosevelt, in an article in the *Century* magazine for November 1886.

tion of offices whereby some of the friends of one shall get places, the residue being left for the friends of the other. A well-organized city party has usually a disposable vote which can be so cast under the directions of the managers as to effect this, or any other desired result. The appearance of hostility must, of course, be maintained for the benefit of the public; but as it is for the interest of both parties to make and keep these private bargains, they are usually kept when made, though of course it is seldom possible to prove the fact.

The real hostility of the Boss is not to the opposite party, but to other factions within his own party. Often he has a rival leading some other organization, and demanding, in respect of the votes which that organization controls, a share of the good things going. The greatest cities can support more than one faction within the same party; thus New York has long had three democratic organizations, two of which are powerful and often angrily hostile. If neither can crush the other, it finds itself obliged to treat, and to consent to lose part of the spoils to its rival. Still more bitter, however, is the hatred of Boss and Ring towards those members of the party who do not desire and are not to be appeased by a share of the spoils, but who agitate for what they call reform. They are natural and permanent enemies; nothing but the extinction of the Boss himself and of bossdom altogether will satisfy them. They are moreover the common enemies of both parties, that is, of bossdom in both parties. Hence in ring-governed cities professionals of both parties will sometimes unite against the reformers, or will rather let their opponents secure a place than win it for themselves by the help of the "independent vote." Devotion to "party government," as they understand it, can hardly go farther.

This great army of workers is mobilized for elections, the methods of which form a wide and instructive department of political science. Here I have to refer only to their financial side, because that is intimately connected with the Machine. Elections need money, in America a great deal of money. Where, then, does the money come from, seeing that the politicians themselves belong to, or emerge from, a needy class?

The revenues of a Ring, that is, their collective, or, as one may say, corporate revenues, available for party purposes, flow from five sources.

I. The first is public subscriptions. For important elections such as the biennial elections of State officers, or perhaps for that of the State legislature, a "campaign fund," as it is called, is raised by an appeal to wealthy members of the party. So strong is party feeling that many respond, even though they suspect the men who compose the Ring, disapprove its methods, and have no great liking for the candidates.

II. Contributions are sometimes privately obtained from rich men who, though not directly connected with the Ring, may expect something from its action. Contractors, for instance, have an interest in getting pieces of work from the city authorities. Railroad men have an interest in preventing State legislation hostile to their lines. Both, therefore, may be willing to help those who can so effectively help them. This source of income is only available for important elections. Its incidental mischief in enabling wealth to control a legislature through a Ring is serious.

III. An exceptionally audacious Ring will sometimes make an appropriation from the city or (more rarely) from the State treasury for the purposes not of the city or the State, but of its own election funds.

It is not thought necessary to bring such an appropriation[1] into the regular accounts to be laid before the public; in fact, pains are taken to prevent the item from appearing, and the accounts have often to be manipulated for that purpose. The justification, if any, of conduct not authorized by the law, must be sought in precedent, in the belief that the other side would do the same, and in the benefits which the Ring expects to confer upon the city it administers. It is a method of course available only when Ring officials have the control of the public funds, and cannot be resorted to by an opposition.

IV. A tax is levied upon the office-holders of the party, varying from one to four or even five per cent upon the amount of their annual salaries. The aggregate annual salaries of the city officials in New York City amount to $11,000,000 (£2,200,000 sterling), and those of the two thousand five hundred Federal officials, who, if of the same party, might also be required to contribute,[2] to $2,500,000 (£500,000 sterling). An assessment at two per cent on these amounts would produce over £45,000 and £10,000 respectively, quite a respectable sum for election expenses.[3] Even policemen in cities, even office boys, and workmen in Federal dockyards, have been assessed by their respective parties. As a tenant had

[1] The practice of openly taking from Parliament a sum for secret service money, which was usually applied by the government in power for electioneering purposes, has just been finally extinguished (1887) in England. A sum is still voted for foreign secret service. In England, however, the money was regularly voted each session for the purpose, and though no account was rendered, it was well understood how it went.

[2] Federal officials, would, as a rule, contribute only to the fund for Federal elections; but when the contest covered both Federal and city offices the funds would be apt to be blended.

[3] To make the calculation complete we should have to reckon in also the State officials and assessments payable by them.

in the days of feudalism to make occasional money payments to his lord in addition to the military service he rendered, so now the American vassal must render his aids in money as well as give knightly service at the primaries, in the canvass, at the polls. His liabilities are indeed heavier than those of the feudal tenant, for the latter could relieve himself from duty in the field by the payment of scutage, while under the Machine a money payment never discharges from the obligation to serve in the army of "workers." As in the days of the Anglo-Norman kings, forfeiture and the being proclaimed as "nithing" is the penalty for failure to discharge the duties by which the vassal holds. Efforts which began with an order issued by President Hayes in 1877 applying to Federal offices, have lately been made to prevent by administrative action and by legislation the levying of this tribute on officials, but they have not as yet proved completely successful, for the subordinate fears to offend his superiors.

V. Another useful expedient has been borrowed from European monarchies in the sale of nominations and occasionally of offices themselves.[1] A person who seeks to be nominated as candidate for one of the more important offices, such as a judgeship or a seat in the State Senate, or in Congress, is often required to contribute to the election fund a sum proportioned to the importance of the place he seeks, the excuse given for the practice being the cost of elections; and the same principle is occasionally applied to the gift of non-elective offices, the right of appointing to which is vested in some official member of a Ring—*e.g.* a mayor. The price of a nomination for a seat in the State legis-

[1] As judicial places were sold under the old French monarchy, and commissions in the army in England till sixteen years ago.

lature is said to run from $500 up to $1000, and for one of the better judgeships as high as $5000; but this is largely matter of conjecture.[1] Of course much less will be given if the prospects of carrying the election are doubtful: the prices quoted must be taken to represent cases where the party majority makes success certain. Naturally, the salaries of officials have to be raised in order to enable them to bear this charge, so that in the long run it may be thrown upon the public; and a recent eminent boss of New York City defended, before a committee of the legislature, the large salaries paid to aldermen, on the ground that "heavy demands were made on them by their party."[2]

[1] "A judgeship," says Mr. F. W. Whitridge, "costs in New York about $15,000; the district attorneyship the same; for a nomination to Congress the price is about $4000, though this is variable; an aldermanic nomination is worth $1500, and that for the Assembly from $600 to $1500. The amount realized from these assessments cannot be exactly estimated but the amount raised by Tammany Hall, which is the most complete political organization, may be fixed very nearly at $125,000 (£25,000). This amount is collected and expended by a small executive committee who keep no accounts and are responsible only to each other."—Article "Assessments" in *Amer. Cyclop. of Political Science.*

In 1887 the Democratic Rings in New York City demanded $25,000 for the nomination to the Comptrollership, and $5000 for that to a State Senatorship. The salary of the Comptroller is $10,000 for three years, that of Senator $1500 for two years, *i.e.* the senatorial candidate is expected to pay $2000 more than his salary.

[2] "Before a committee of the New York legislature the county clerk testified that his income was nearly $80,000 a year, but with refreshing frankness admitted that his own position was practically that of a figure-head, and that all the work was done by his deputy on a small fixed salary. As the county clerk's term is three years, he should nominally receive $240,000, but as a matter of fact two-thirds of the money probably goes to the political organizations with which he is connected."—Mr. T. Roosevelt in *Century* magazine for Nov. 1886. A county officer answered the same committee, when they put what was meant to be a formal question as to whether he performed his public duties faithfully, that he did so perform them whenever they did not conflict with his political duties! meaning thereby, as he explained, attending to his local organizations, seeing politicians, "fixing" primaries, bailing out those of his friends who were summoned to appear before a justice of peace, etc.

CHAPTER LXIV

LOCAL EXTENSION OF RINGS AND BOSSES

To determine the extent to which the Ring and Boss system sketched in the preceding chapters prevails over the United States would be difficult even for an American, because it would require a minute knowledge of the local affairs of all the States and cities. Much more, then, is it difficult for a European. I can do no more than indicate generally the results of the inquiries I have made, commending the details of the question to some future investigator.

It has been pointed out that rings and bosses are the product not of democracy, but of a particular form of democratic government, acting under certain peculiar conditions. They belong to democratic government, as the old logicians would say, not *simpliciter* but *secundum quid:* they are not of its essence, but are merely separable accidents. We have seen that these conditions are—

The existence of a Spoils System (=paid offices given and taken away for party reasons).

Opportunities for illicit gains arising out of the possession of office.

The presence of a mass of ignorant and pliable voters.

The insufficient participation in politics of the "good citizens."

If these be the true causes or conditions producing the phenomenon, we may expect to find it most fully developed in the places where the conditions exist in fullest measure, less so where they are more limited, absent where they do not exist.

A short examination of the facts will show that such is the case.

It may be thought that the Spoils System is a constant, existing everywhere, and therefore not admitting of the application of this method of concomitant variations. That system does no doubt prevail over every State of the Union, but it is not everywhere an equally potent factor, for in some cities the offices are much better paid than in others, and the revenues which their occupants control are larger. In some small communities the offices, or most of them, are not paid at all.[1] Hence this factor also may be said to vary.

We may therefore say with truth that all of the four conditions above named are most fully present in great cities. Some of the offices are highly paid: many give facilities for lucrative jobbing. The voters are so numerous that a strong and active organization is needed to drill them; the majority so ignorant as to be easily led. The best citizens are engrossed in business and cannot give to political work the continuous attention it demands. Such are the phenomena of New York, Philadelphia, Chicago, Brooklyn, St. Louis, Cincinnati, San Francisco, Baltimore, and New Orleans. In these cities Ring-and-bossdom has attained its amplest growth, overshadowing the whole field of politics.[2]

[1] For instance, the "selectmen" of a New England Town are not paid.

[2] Of course the results are not equally bad in all these cities.

Of the first two of these I need not speak in detail here, proposing to describe their phenomena in later chapters. Chicago, Baltimore, and San Francisco are little if at all better. I subjoin some remarks bearing on five other cities, with which I have been favoured by leading citizens resident therein, in reply to interrogatories which I addressed to them. The importance of the subject may excuse the length of these quotations. Knowing how apt a stranger is to imagine a greater uniformity than exists, I am anxious to enable the reader to understand to what extent the description I have given is generally true, and with what local diversities its general truth is compatible.

Cincinnati (population in 1880, 255,139)—

"Our Ring is in a less formal shape than is sometimes seen, but dishonest men of both parties do in fact combine for common profits at the public expense. As regards a Boss, there is at this moment an interregnum, but some ambitious men are observed to be making progress towards that dignity. Rings are both the effect and the cause of peculation. They are the result of the general law of combination to further the interest of the combiners.

"Where a Ring exists it can always exclude from office a good citizen known to be hostile to it. But a good easy man who will not fight and will make a reputable figurehead may be an excellent investment.

"The large cities are the great sufferers from the Spoils System, because in them power gives the greatest opportunity for profit and peculation. In them also it is easy to make a more or less open combination of keepers of tippling shops and the 'bummers,' etc., who congregate in them. Here, too, is the natural home of the class of vagabonds who will profess devotion to the party or the man who will pay them, and who combine to levy blackmail upon every candidate, and in turn are ready to stuff ballot-boxes, to buy votes, to 'repeat,' etc. These scoundrels 'live by politics' in their way, and force their services upon more prominent men, till there comes to be a sort of 'solidarity' in which men of national reputation find themselves morally compromised by being obliged to

recognize this sort of fraternity, and directly or indirectly to make themselves responsible for the methods of these 'henchmen' and followers. They dare not break with this class because its enmity would defeat their ambitions, and the more unscrupulous of them make fullest use of the co-operation, only rendering a little homage to decency by seeking to do it through intermediates, so as not too disgustingly to dirty their own hands.

"In such a condition of things the cities become the prey of the 'criminal class' in politics, in order to ensure the discipline and organization in State and national politics which are necessary to the distinguished leaders for success. As a result it goes almost without saying that every considerable city has its rings and its actual or would-be bosses. There are occasional 'revolutions of the palace' in which bosses are deposed, or 'choked off,' because they are growing too fat on the spoils, and there is no such permanence of tenure as to enable the uninitiated always to tell what boss or what ring is in power. They do not publish an *Almanach de Gotha*, but we feel and know that the process of plunder continues. A man of genius in this way, like a Tweed or a Kelly, comes occasionally to the front, but even in the absence of a ruler of this sort the ward politicians can always tell where the decisive influences reside.

"The *size* of the city in which the system reaches full bloom depends upon its business and general character. Small towns with a proportionately large manufacturing population are better fields for rings than more homogeneous communities built up as centres of mercantile trade. The *tendency* however is to organize an official body of 'workers' in even the smallest community; and the selfishness of man naturally leads to the doctrine that those who do the work shall live by it. Thus, from the profits of 'rotation in office' and the exercise of intrigue and trick to get the place of the present incumbent, there is the *facilis descensus* to regarding the profits of peculation and the plunder of the public as a legitimate corrective for the too slow accumulation from legal pay. Certain salaries and fees in local offices are notoriously kept high, so that the incumbent may freely 'bleed' for party use, or, what is the same thing, for the use of party 'bummers.' Thus we have had clerks of courts and sheriffs getting many times as much pay as the judges on the bench, etc. From this, jobbing in contracts, bribery, and unblushing stealing are reached by such easy steps that perhaps the local politician is hardly conscious of the progress in his moral education."

St. Louis (population in 1880, 350,518)—

"There are always Rings in both parties more or less active according to circumstances.

"Two or perhaps three men are the recognized Bosses of the Democratic party (which is in the majority), one man of the Republican.

"The Rings are the cause of both peculation and jobbery, although St. Louis has had no 'big steal.'

"A good citizen seeking office would be excluded by the action of the Rings in our large cities, except in times of excitement, when good people are aroused to a proper sense of duty."

Louisville (Kentucky), population in 1880, 123,758 · ·

"It can hardly be said that there is a regular Ring in Louisville. There are corrupt combinations, but they are continually shifting. The higher places in these combinations are occupied by Democrats, these being the ruling party, but they always contain some Republicans.

"The only Boss there is in Louisville to-day is the Louisville Gas Company. It works mainly through the Democratic party, as it is easier to bribe the 'Republican' negroes into the support of Democratic candidates than white Democrats to support Republicans.

"There is very little peculation in Kentucky now—no great disclosure for over five years; but there is a great deal of jobbery.

"The effect of the combinations is of course towards excluding good and capable men from office and to make room for mere favourites and local politicians."

Minneapolis (Minnesota), population in 1880, 46,887, now estimated at 200,000—

"There has been for several years past a very disreputable Ring, which has come into power by capturing the machinery of the Democratic party, through (1) diligent work in the ward caucuses; (2) by its active alliance with the liquor dealers, gamblers, and so forth, and the support of 'lewd fellows of the baser sort,' regardless of national political preferences; (3) by a skilful and plausible championship of 'labor' and a capture of the labor vote.

"The Boss of this gang is thoroughly disliked and distrusted by the responsible and reputable element of his party in Minnesota,

but they tolerate him on account of his popularity and because they cannot break him down. He has operated chiefly through control of the police system. Instead of suppressing gambling houses, for example, he, being a high official, has allowed several of them to run under police protection, himself sharing in their large gains. Until recently the liquor saloon licences have been $500 (£100) a year. He and the heads of the police department have allowed a number of places to retail liquor somewhat secretly outside the police patrol limits, within which we restrict the liquor traffic, and from these illicit publicans the Ring has collected large sums of money.

"The Ring has seemed to control the majority in the Common Council, but the system of direct taxation and of checking expenditure is so open, and the scrutiny of the press and public so constant, that there has been little opportunity for actual plunder. In the awarding of contracts there is sometimes a savour of jobbery, and several of the councilmen are not above taking bribes. But they have been able to do comparatively little mischief; in fact, nothing outrageous has occurred outside of the police department. The Ring has lately obtained control of the (elective) Park Board, and some disreputable jobs have resulted. So there have been malpractices in the department of health and hospitals, in the management of the water system and in the giving away of a street railway franchise. But we are not a badly-plundered city by any means; and we have just succeeded in taking the control of the police out of the hands of the Ring officials and vested it in a Metropolitan Police Board, with excellent results. Two of the Ring are now under indictment of the county grand jury for malpractices in office."

St. Paul (Minnesota), population in 1880, 41,473, now over 160,000—

"There is no regular Ring in St. Paul. It has for many years been in the hands of a clique of municipal Democratic politicians, who are fairly good citizens, and have committed no very outrageous depredations. The city is run upon a narrow partisan plan, but in its main policies and expenditures the views of leading citizens as formulated in the Chamber of Commerce almost invariably prevail.

"The Rings of Western cities (adds my informant) are not deliberately organized for plunder or jobbery. They grow out of

our party politics. Certain of the worse elements of a party find that their superior diligence and skill in the manipulation of precinct and ward caucuses put them in control of the local machinery of their party organization. The success of their party gives them control of municipal affairs. They are generally men who are not engaged in successful trade or professional life, and make city politics their business. They soon find it profitable to engage in various small schemes and jobs for profit, but do not usually perpetrate anything very bold or bad."

I have taken the two cities of Minneapolis and St. Paul because they illustrate the differences which one often finds between places whose population and other conditions seem very similar. The centres of these two cities are only ten miles apart; their suburbs will soon begin to touch. Minneapolis is younger, and has grown far more rapidly, and the manufacturing element in its population is larger. But in most respects it resembles its elder sister—they are extremely jealous of one another—so closely that an Old World observer who has not realized the swiftness with which phenomena come and go in the West is surprised to find the political maladies of the one so much graver than those of the other. In a few years' time Minneapolis may have regained health, St. Paul perhaps have lost it.

In cities of the second rank (say from ten thousand to one hundred thousand inhabitants) some of the same mischiefs exist, but on a smaller scale. The opportunities for jobbing are limited. The offices are moderately paid. The population of new immigrants, politically incompetent, and therefore easily pervertible, bears a smaller ratio to the native Americans. The men most prominent by their wealth or capacity are more likely to be known to the mass of the voters, and may have more leisure to join in local politics. Hence, although we find rings in many of these cities, they

are less powerful, less audacious, less corrupt. There are, of course, differences between one city and another, differences sometimes explicable by its history and the character of its population. A very high authority writes me from Michigan, a State above the average—

"I have heard no charge of the reign of Bosses or Rings for the 'purposes of peculation' in any of the cities or towns of Michigan or Indiana, or indeed in more than a few of our cities generally, and those for the most part are the large cities. In certain cases rings or bosses have managed political campaigns for partisan purposes, and sometimes to such an extent, say in Detroit (population in 1880, 116,340), that good citizens have been excluded from office or have declined to run. But robbery was not the aim of the rings. In not a few of our cities the liquor-saloon keepers have combined to 'run politics' so as to gain control and secure a municipal management friendly to them. That is in part the explanation of the great uprising of the Prohibition party. I think the country is not to be afflicted in the future as it has been in the past, with rings and bosses. The people, even in the larger cities, have at last been awakened."

The cities of New York State seem to suffer more than those of New England or the West. Albany (a place of 90,000 people) has long groaned under its bosses, but as the seat of the New York legislature it is a focus of intrigue. Buffalo (with 155,000) has a large Irish and German population. Rochester and Troy are ruled by local cliques; the latter is full of fellows who go to serve as "repeaters" at Albany elections. Syracuse is smaller and better than any of the four preceding, but has of late years shown some serious symptoms of the same disease. Cleveland in Ohio is a larger place than any of these, but having, like the rest of Northern Ohio, a better quality of population, its rings have never carried things with a high hand, nor stolen public money. The same may be said of Milwaukee in Wisconsin, and such New England cities

as Providence, Augusta, Hartford, Lowell. The system more or less exists in all of these, but the bosses have not ventured to exclude respectable outsiders from office, nor have they robbed the city, debauched the legislature, retained their power by election frauds after the manner of their great models in New York and Philadelphia. And this seems to hold true also of the Western and Southern cities of moderate size.

As regards Ohio a judicious authority says—

"Rings are much less likely to exist in the smaller cities, though a population of 30,000 or 40,000 may occasionally support them. We should hardly find them in a city below 10,000: any corruption there would be occasional, not systematic."

As regards Missouri I am informed that—

"We have few or no Rings in cities under 60,000 inhabitants. The smaller cities are not favourable to such kinds of control. Men know one another too well. There is no large floating irresponsible following as in large cities."

A similar answer from Kentucky adds that Rings have nevertheless been heard of in cities so small as Lexington (25,000 inhabitants) and Frankfort (6500).

In quite small towns and in the rural districts—in fact, wherever there is not a municipality, but government is either by a town meeting and selectmen or by township or county officials—the dangerous conditions are reduced to their minimum. The new immigrants are not generally planted in large masses but scattered among the native population, whose habits and modes of thinking they soon acquire. The Germans and Scandinavians who settle in the country districts have been (for the quality of the most recent immigrants is lower) among the best of their race, and have formed a valuable element. The country voter, whether native or foreign, is exposed to fewer tempta-

tions than his brother of the city, and is less easy either to lead or to drive. He is parsimonious, and pays his county or town officials on a niggardly scale. A boss has therefore no occupation in such a place. His talents would be wasted. If a ring exists in a small city it is little more than a clique of local lawyers who combine to get hold of the local offices, each in his turn, and to secure a seat for one of themselves in the State legislature, where there may be pickings to be had. It is not easy to draw the line between such a clique, which one may find all the world over, and a true Ring: but by whichever name we call the weed, it does little harm to the crop. Here and there, however, one meets with a genuine Boss even in these seats of rural innocence. I know a New England Town, with a population of about ten thousand people, which has long been ruled by such a local wirepuller. I do not think he steals. But he has gathered a party of voters round him, by whose help he carries the offices, and gets a chance of perpetrating jobs which enrich himself and supply work for his supporters. The circumstances, however, are exceptional. Within the taxing area of the Town there lie many villas of wealthy merchants, who do business in a neighbouring city, but are taxed on their summer residences here. Hence the funds which this Town has to deal with are much larger than would be the case in most towns of its size, while many of the rich tax-payers are not citizens here, but vote in the city where they live during the winter.[1] Hence they cannot go to the town meeting to beard the boss, but must grin and pay while they watch his gambols.

[1] It will be remembered that in the United States, though a man may pay taxes on his real estate in any number of States or counties or cities, he can vote, even in purely local elections or on purely local matters, in one place only—that in which he is held to reside.

Speaking generally, the country places and the smaller cities are not ring-ridden. There is a tendency everywhere for the local party organizations to fall into the hands of a few men, perhaps of one man. But this happens not so much from an intent to exclude others and misuse power, as because the work is left to those who have some sort of interest in doing it, that, namely, of being themselves nominated to an office. Such persons are seldom professional office-seekers, but lawyers, farmers, or store-keepers, who are glad to add something to their income, and have the importance, not so contemptible in a village, of sitting in the State legislature. Nor does much harm result. The administration is fairly good; the tax-payers are not robbed. If a leading citizen, who does not belong to the managing circle, wishes to get a nomination, he will probably succeed; in fact, no one will care to exclude him. In many places there is a non-party "citizens' committee" which takes things out of the hands of the two organizations by running as candidates respectable men irrespective of party. Such candidates are often carried, and will be carried if the local party managers have offended public sentiment by bad nominations. In short, the materials for real ring government do not exist, and its methods are inapplicable, outside the large cities. No one needs to fear it, or does fear it.

What has been said refers chiefly to the Northern, Middle, and Western States. The circumstances of the South are different, but they illustrate equally well the general laws of ring growth. In the Southern cities there is scarcely any population of European immigrants. The lowest class consists of negroes and "poor whites." The negroes are ignorant, and would be dangerously plastic material in the hands of unscrupulous

wirepullers, as was amply shown after the Civil War. But they have hitherto mostly belonged to the Republican party, and the Democratic party has so completely regained its ascendency that the bosses who controlled the negro vote can do nothing. In most parts of the South the men of ability and standing have interested themselves in politics so far as to dictate the lines of party action. Their position when self-government was restored and the carpet-baggers had to be overthrown forced them to exertions. Sometimes they use or tolerate a ring, but they do not suffer it to do serious mischief, and it is usually glad to nominate one of them, or any one whom they recommend. The old traditions of social leadership survive better in the South than in the North, so that the poorer part of the white population is more apt to follow the suggestions of eminent local citizens and to place them at its head when they will accept the position. Moreover, the South is a comparatively poor country. Less is to be gained from office (including membership of a legislature), either in the way of salary or indirectly through jobbing contracts or influencing legislation. The prizes in the profession of politics being fewer, the profession is not prosecuted with the same earnestness and perfection of organization. There are, however, some cities where conditions similar to those of large Northern cities reappear, and there Ring-and-bossdom reappears also. New Orleans is the best example, and in Arkansas and Texas, where there never was a plantation aristocracy like that of the Atlantic Slave States, rings are pretty numerous, though, as the cities are small and seldom rich, their exploits attract little attention.

CHAPTER LXV

SPOILS

An illustration of the familiar dictum regarding the wisdom with which the world is governed may be found in the fact that the greatest changes are often those introduced with the least notion of their consequence, and the most fatal those which encounter least resistance. So the system of removals from Federal office which began some sixty years ago, though disapproved of by some of the leading statesmen of the time, including Clay, Webster, and Calhoun, excited comparatively little attention in the country, nor did its advocates foresee a tithe of its far-reaching results.

The Constitution of the United States vests the right of appointing to Federal offices in the President, requiring the consent of the Senate in the case of the more important, and permitting Congress to vest the appointment of inferior officers in the President alone, in the courts, or in the heads of departments. It was assumed that this clause gave officials a tenure at the pleasure of the President—*i.e.* that he had the legal right of removing them without cause assigned. But the earlier Presidents considered the tenure as being practically for life or during good behaviour, and did not remove, except for some solid reason, persons appointed by their predecessors. Washington

in his eight years displaced only nine persons, and all for cause, John Adams nine in four years, and those not on political grounds. Jefferson in his eight years removed thirty-nine, but many of these were persons whom Adams had unfairly put in just before quitting office; and in the twenty years that followed (1808-28) there were but sixteen removals. In 1820, however, a bill was run through Congress fixing four years as the term for a large number of offices. This was ominous of evil, and called forth the displeasure of both Jefferson and Madison. The President, however, and his heads of departments did not remove, so the tenure of good behaviour generally remained. But a new era began with the hot and heady Jackson, who reached the presidential chair in 1828. He was a raw rude Western, a man of the people, borne into power by a popular movement, incensed against all who were connected with his predecessor, a warm friend and a bitter enemy, anxious to repay services rendered to himself. Penetrated by extreme theories of equality, he proclaimed in his Message that rotation in office was a principle in the Republican creed, and obeyed both his doctrine and his passions by displacing five hundred post-masters in his first year, and appointing partisans in their room. The plan of using office as a mere engine in partisan warfare had already been tried in New York, where the stress of party contests had led to an early development of many devices in party organization; and it was a New York adherent of Jackson, Marcy, who, speaking in the Senate in 1832, condensed the new doctrine in a phrase that has become famous—"To the victor belong the spoils."[1]

[1] Before 1820 Governor Clinton complained "of an organized and disciplined corps of Federal officials interfering in State elections."

From 1828 till a few years ago the rule with both parties has been that on a change of President nearly all Federal offices, from the legations to European Courts down to village postmasterships, are deemed to be vacant. The present holders may of course be continued or reappointed (if their term has expired); and if the new President belongs to the same party as his predecessor, many of them will be; but they are not held to have either a legal or a moral claim. The choice of the President or departmental head has been absolutely free, no qualifications, except the citizenship of the nominee, being required, nor any check imposed on him, except that the Senate's consent is needed to the more important posts.[1]

The want of knowledge on the part of the President and his ministers of the persons who applied for places at a distance, obliged them to seek information and advice from those who, belonging to the neighbourhood, could give it. It was natural for the senators from a State or the representative in Congress from a district within which a vacant office lay, to recommend to the President candidates for it, natural for the President or his ministers to be guided by this recommendation, of course, in both cases, only when they belonged to the same party as the President.[2] Although this usage received no sanction from the Constitution, senators and representatives maintained it so persistently, since it strengthened themselves and their party in the locality,

Marcy's speech was a defence of the system of partisan removals and short terms from the example of his own State. "They [the New York politicians] when contending for victory avow the intention of enjoying the fruits of it. They see nothing wrong in the rule that to the victor belong the spoils of the enemy."

[1] See on this subject, Chapter V. in Vol. I.

[2] Not necessarily the majority, for the President may be of the party which is in a minority in Congress.

that the executive virtually admitted the rights they claimed, and suffered its patronage to be prostituted to the purpose of rewarding local party service and conciliating local party support. Now and then a President, or a strong Minister controlling the President, has proved restive; yet the usage continues, being grounded on the natural wish of the executive to have the good-will and help of the senators in getting treaties and appointments confirmed, and on the feeling that the party in every district must be strengthened by a distribution of good things, in the way which the local leader thinks most serviceable. The essential features of the system are, that a place in the public service is held at the absolute pleasure of the appointing authority; that it is invariably bestowed from party motives on a party man, as a reward for party services (whether of the appointee or of some one who pushes him); that no man expects to hold it any longer than his party holds power; and that he has therefore the strongest personal reasons for fighting in the party ranks. Thus the conception of office among politicians came to be not the ideal one, of its involving a duty to the community, nor the "practical" one, of its being a snug berth in which a man may live if he does not positively neglect his work, but the perverted one, of its being a salary paid in respect of party services, past, present, and future.

The politicians, however, could hardly have riveted this system on the country but for certain notions which had become current among the mass of the people. "Rotation in office" was, and indeed by most men still is, held to be conformable to the genius of a democracy. It gives every man an equal chance of power and salary, resembling herein the Athenian and Florentine system of choosing officers by lot.

It is supposed to stimulate men to exertion, to foster a laudable ambition to serve the country or the neighbourhood, to prevent the growth of an official caste, with its habits of routine, its stiffness, its arrogance. It recognizes that equality which is so dear to the American mind, bidding an official remember that he is the servant of the people and not their master, like the bureaucrats of Europe. It forbids him to fancy that he has any right to be where he is, any ground for expecting to stay there. It ministers in an odd kind of way to that fondness for novelty and change in persons and surroundings which is natural in the constantly-moving communities of the West. The habit which grew up of electing State and city officers for short terms tended in the same direction. If those whom the people itself chose were to hold office only for a year or two, why should those who were appointed by Federal authority have a longer tenure? And the use of patronage for political purposes was further justified by the example of England, whose government was believed by the Americans of fifty years ago to be worked, as in last century it largely was worked, by the Patronage Secretary of the Treasury in his function of distributing places to members of the House of Commons, and honours (such as orders, and steps in the peerage) to members of the House of Lords, ecclesiastical preferments to the relatives of both.[1]

Another and a potent reason why the rotation plan commended itself to the Americans is to be found in the belief that one man is as good as another, and will do well enough any work you set him to, a belief happily

[1] Now of course the tables have been turned, and the examples of the practically irremovable English civil service and of the competitive entrance examinations in England are cited against the American system.

expressed by their old enemy King George the Third when he said that "every man is good enough for any place he can get." In America every smart man is expected to be able to do anything that he turns his hand to, and the fact that a man has worked himself into a place is some evidence of his smartness. He is a "practical man." This is at bottom George the Third's idea; if you are clever enough to make people give you a place, you are clever enough to discharge its duties, or to conceal the fact that you are not discharging them. It may be added that most of these Federal places, and those which come most before the eyes of the ordinary citizen, require little special fitness. Any careful and honest man does fairly well for a tide-waiter or a lighthouse keeper. Able and active men had no great interest in advocating appointment by merit or security of tenure, for they seldom wanted places themselves; and they had, or thought they had, an interest in jobbing their poor relatives and unprosperous friends into the public service. It is true that the relative or friend ran the risk of being turned out. But hope is stronger than fear. The prospect of getting a place affects ten people for one who is affected by the prospect of losing it, for aspirants are many and places relatively few.

Hitherto we have been considering Federal offices only, the immense majority whereof are such petty posts as those of postmaster in a village, custom-house officer at a seaport, and so forth, although they also include clerkships in the departments at Washington, foreign ambassadorships and consulates, and governorships of the Territories. The system of rotation had however laid such a hold on the mind of the country that it soon extended itself over State offices and city offices also, in

so far as such offices remained appointive, and were not, like the higher administrative posts and (in most of the States and the larger cities) the judicial offices, handed over to popular election. Thus appointment by favour and tenure at the pleasure of the appointer became the rule in every sphere and branch of government, National, State, and municipal, down to that very recent time of which I shall speak presently. It may seem strange that a people so eminently practical as the Americans acquiesced in a system which perverts public office from its proper function of serving the public, destroys the prospect of that skill which comes with experience, and gives nobody the least security that he will gain a higher post, or even retain the one he holds, by displaying the highest efficiency. The explanation is that administration used to be conducted in a happy-go-lucky way, that the citizens, accustomed to help themselves, relied very little on their functionaries, and did not care whether they were skilful or not, and that it was so easy and so common for a man who fell out of one kind of business to take to and make his living by another that deprivation seemed to involve little hardship. However, the main reason was that there was no party and no set of persons specially interested in putting an end to the system, whereas there soon came to be a set specially concerned to defend it. It developed, I might almost say created, the class of professional politicians, and they maintained it, because it exactly suited them. That great and growing volume of political work to be done in managing primaries, conventions, and elections for the city, State, and National governments, whereof I have already spoken, and which the advance of democratic sentiment and the needs of party warfare evolved

from 1820 down to about 1850, needed men who should give to it constant and undivided attention. These men the plan of rotation in office provided. Persons who had nothing to gain for themselves would soon have tired of the work. The members of a permanent civil service would have had no motive for interfering in politics, because the political defeat of a public officer's friends would have left his position the same as before, and the civil service not being all of one party, but composed of persons appointed at different times by executives of different hues, would not have acted together as a whole. Those, however, whose bread and butter depend on their party may be trusted to work for their party, to enlist recruits, look after the organization, play electioneering tricks from which ordinary party spirit might recoil. The class of professional politicians was therefore the first crop which the spoils system, the system of using public office as private plunder, bore. Bosses were the second crop. In the old Scandinavian poetry the special title of the king or chieftain is "the giver of rings." He attracts followers and rewards the services, whether of the warrior or the skald, by liberal gifts. So the Boss wins and holds power by the bestowal of patronage. Places are the prize of victory in election warfare; he divides this spoil before as well as after the battle, promising the higher elective offices to the strongest among his fighting men, and dispensing the minor appointive offices which lie in his own gift, or that of his lieutenants, to combatants of less note but equal loyalty. Thus the chieftain consolidates, extends, fortifies his power by rewarding his supporters. He garrisons the outposts with his squires and henchmen, who are bound fast to him by the hope of getting something more, and the fear of

losing what they have. Most of these appointive offices are too poorly paid to attract able men; but they form a stepping-stone to the higher ones obtained by popular election; and the desire to get them and keep them provides that numerous rank and file which the American system requires to work the Machine. In a country like England office is an object of desire to a few prominent men, but only to a few, because the places which are vacated on a change of government are less than fifty in all, while vacancies in other places happen only by death or promotion. Hence an insignificant number of persons out of the whole population have a personal pecuniary interest in the triumph of their party. In England, therefore, one has what may be called the general officers and headquarters staff of an army of professional politicians, but few subalterns and no privates. And in England most of these general officers are rich men, independent of official salaries. In America the privates are proportioned in number to the officers. They are a great host. As nearly all live by politics, they are held together by a strong personal motive. When their party is kept out of the spoils of the Federal government, as the Democrats were out from 1861 till 1885, they have a second chance in the State spoils, a third chance in the city spoils; and the prospect of winning at least one of these two latter sets of places maintains their discipline and whets their appetite, however slight may be their chance of capturing the Federal offices.

It is these spoilsmen who have depraved and distorted the mechanism of politics. It is they who pack the primaries and run the conventions so as to destroy the freedom of popular choice, they who contrive and execute the election frauds which disgrace

some States and cities,—repeating and ballot-stuffing, obstruction of the polls, and fraudulent countings in.[1]

In making every administrative appointment a matter of party claim and personal favour, the system has lowered the general tone of public morals, for it has taught men to neglect the interests of the community, and made insincerity ripen into cynicism. Nobody supposes that merit has anything to do with promotion, or believes the pretext alleged for an appointment. Politics has been turned into the art of distributing salaries so as to secure the maximum of support from friends with the minimum of offence to opponents. To this art able men have been forced to bend their minds: on this Presidents and ministers have spent those hours which were demanded by the real problems of the country.[2] The rising politician must think of obscure supporters seeking petty places as well as of those greater appointments by which his knowledge of men and his honesty deserve to be judged. It is hardly a caricature in Mr. Lowell's satire when the intending presidential candidate writes to his maritime friend in New England,—

> "If you git me inside the White House,
> Your head with ile I'll kinder 'nint,
> By gittin' you inside the light-house,
> Down to the end of Jaalam pint."

After this, it seems a small thing to add that rotation in office has not improved the quality of the civil service. Men selected for their services at elections or

[1] The fact that in Canada the civil service is permanent may well be thought to have something to do with the absence of such a regular party Machine as the United States possess.

[2] President Garfield said "one third of the working hours of senators and representatives is scarcely sufficient to meet the demands in reference to the appointments to office. . . . With a judicious system of civil service the business of the departments could be better done at half the cost."

in primaries have not proved the most capable servants of the public. As most of the posts they fill need nothing more than such ordinary business qualities as the average American possesses, the mischief has not come home to the citizens generally, but it has sometimes been serious in the higher grades, such as the departments at Washington and some of the greater custom-houses. Moreover, the official is not free to attend to his official duties. More important, because more influential on his fortunes, is the duty to his party of looking after its interests at the election, and his duty to his chiefs, the Boss and Ring, of seeing that the candidate they favour gets the party nomination. Such an official, whom democratic theory seeks to remind of his dependence on the public, does not feel himself bound to the public, but to the city boss or senator or congressman who has procured his appointment. Gratitude, duty, service, are all for the patron. So far from making the official zealous in the performance of his functions, insecurity of tenure has discouraged sedulous application to work, since it is not by such application that office is retained and promotion won. The administration of some among the public departments in Federal and city government is more behind that of private enterprises than is the case in European countries; the ingenuity and executive talent which the nation justly boasts, are least visible in national or municipal business. In short, the civil service is not in America, and cannot under the system of rotation become, a career. Place-hunting is the career, and an office is not a public trust, but a means of requiting party services, and also, under the method of assessments previously described, a source whence party funds may be raised for election purposes.

Some of these evils were observed as far back as 1853, when an Act was passed by Congress requiring clerks appointed to the departments at Washington to pass a qualifying examination.[1] Neither this nor subsequent legislative efforts in the same direction produced any improvement, for the men in office who ought to have given effect to the law were hostile to it. Similar causes defeated the system of competitive examination, inaugurated by an Act of Congress in 1871, when the present agitation for civil service reform had begun to lay hold of the public mind. Mr. Hayes (1877-81) was the first President who seems to have honestly desired to reform the civil service, but the opposition of the politicians, and the indifference of Congress, which had legislated merely in deference to the pressure of enlightened opinion outside, proved too much for him. A real step in advance was however made in 1883, by the passage of what is called from its author (late senator from Ohio) the Pendleton Act, which instituted a board of civil service commissioners (to be named by the President), directing them to apply a system of competitive examinations to a considerable number of offices in the departments at Washington, and a smaller number in other parts of the country. President Arthur named a good commission, and under the rules framed by it some improvement was effected. When Mr. Cleveland became President in 1885 it was feared that the hungry Democrats, having been out of power since 1861, would fall like wolves upon the offices, compelling the President to dismiss the present place-holders to make room for his own

[1] To have made places tenable during good behaviour would have been open to the objection that it would prevent the dismissal of incompetent men against whom no specific charge could be proved.

partisans. Mr. Cleveland, however, if he has not done all the good that sanguine reformers hoped, seems to have acquiesced in less evil than many reformers expected. I do not venture to express an opinion on what is in America a matter of keen controversy, but that he did not make a clean sweep of office-holders, whether belonging to the classes covered by the Pendleton Act or to any others, may be gathered from the complaints that arose from Democratic spoilsmen, who think the presidency is hardly worth winning if it does not bear fruit for the class they belong to.

The Act of 1883 applies to only about 14,000 out of nearly 120,000 posts in the Federal government. But its moral effect has been greater than this proportion represents, and entitles it to the description given of it at the time as "a sad blow to the pessimists." It strengthens the hands of any President who may desire reform, and has stimulated the civil service reform movement in States and municipalities. Several States have now instituted examinations for admission to their civil service; and similar legislation has been applied to New York, Brooklyn, Boston, and other cities. Some years must pass before the result of these changes upon the purification of politics can be fairly judged. It is for the present enough to say that while the state of things above described has been generally true both of Federal and of State and city administration during the last sixty years, there is now reason to hope that the practice of appointing for short terms, and dismissing in order to fill vacancies with political adherents, has been shaken; and that the extension of examinations will tend more and more to exclude mere spoilsmen from the public service.

CHAPTER LXVI

ELECTIONS AND THEIR MACHINERY

I CANNOT attempt to describe the complicated and varying election laws of the different States. But there are some peculiarities of election usage common to most or all States, which have told so much upon practical politics, especially on the Machine politics of cities, as to require a passing notice.

All expenses of preparing the polling places and of paying the clerks and other election officers who receive and count the votes, are borne by the community, not (as in England) by the candidates.

All popular elections, whether for city, State, or Federal offices, are in all States conducted by ballot, which, however, was introduced, and has been regarded, not so much as a device for preventing bribery or intimidation, but rather as the quickest and easiest mode of taking the votes of a multitude. Secrecy has not been specially aimed at, and in point of fact is not generally secured. Accordingly the preparation and distribution to voters of the voting papers has been (I think universally[1]) left to the candidates and their

[1] I do not venture to make statements concerning all the States, because there are many variations in State laws. For the purpose of the present chapter it is of small importance to ascertain exactly what rules prevail in each and every State. What the text describes is the general practice.

friends, that is, to the parties, and the expense of printing and distributing these papers is borne by the latter.

An election is a far more complicated affair in America than in Europe. The number of elective offices is greater, and as terms of office are shorter, the number of offices to be voted for in any given year is much greater. To save the expense of numerous distinct pollings it is usual, though by no means universal, to take the pollings for a variety of offices at the same time, that is to say, to elect Federal officials (presidential electors and congressmen), State officials, county officials, and city officials on one and the same day and at the same polling booths. Presidential electors are chosen only once in four years, congressmen once in two. But the number of State and county and city places to be filled is so large that a voter seldom goes to the polling booth without having to cast his vote for at least eight or ten persons, candidates for different offices, and sometimes he may vote for twenty or thirty.[1]

This has given rise to the system of slip tickets. A slip ticket is a list, printed on a long strip of paper, of the persons standing in the same interest, that is to say, recommended by the same party or political group for the posts to be filled up at any election.[2] It is issued by the party organization on the eve of the election, and contains the names of the party nominees, with the offices for which they are respectively candidates. Copies of the slip, proportioned to the number of voters, are struck off by the party committee and

[1] Sometimes as many as six distinct ballot boxes are placed to receive votes for different sets of offices.

[2] A ticket includes more names or fewer, according to the number of offices to be filled, but usually more than a dozen. The Note at the end of this chapter contains several specimen tickets used at elections in 1887.

handed to their agents, who take their stand in front of the polling booths and distribute the tickets to the voters as they come up and enter. Each party of course looks first after its own adherents, but gladly supplies its tickets to every voter who consents to take them. There is no secrecy; the voter may be seen taking the ticket from the agent of his party, and can be followed by watchful eyes from the moment of his having taken it till he deposits it in the ballot box. If he is an average sort of person, he drops it in just as he has received it. This is called voting the "regular" or "straight" ticket. If, however, he be a man of some independence, and dislikes one or more of the names he finds on his party ticket, he strikes out those names, and probably writes in some other name instead. This is called "scratching." To facilitate such action, the practice has grown up for agents to be placed at the voting place who supply small slips of paper gummed at the back, and bearing on the front the name of some other candidate for one or more of the posts vacant. Such slips are called "pasters" or "stickers," because the independent voter pastes them over the name or names of the person or persons he objects to on the ticket which he is about to place in the box, thus saving himself the trouble of "scratching," and securing the result he desires, that of voting his party ticket subject to the variations he prefers. Thus the degree to which pasters are used in a given election is a measure either of the badness of the lists of candidates issued by the parties, or of the independence of the voters, or of both phenomena together. Unfortunately, the number of candidates is often so great, and the knowledge which the average citizen has of many of them so small, that many who would be glad to "scratch" or "paste" have really no

data for doing so, and, especially in large cities, vote the party ticket in despair.

There are two questions that may be asked regarding an election system. One is, whether it is honestly carried out by the officials? To this question, as it regards the United States, no general answer can be given, because there are the widest possible differences between different States; differences due chiefly to the variations in their election laws, but partly also to the condition of the public conscience. In some States, such as, for instance, New York, the official conduct of elections is now believed to be absolutely pure, owing, one is told, to the excellence of a minutely careful law. In others, frauds, such as ballot stuffing and false counting, are said to be common, not only in city, but also in State and Federal elections. I have no data to determine how widely frauds prevail, for their existence can rarely be proved, and they often escape detection. They are sometimes suspected where they do not exist. Still there is reason to think that in some few States they are frequent enough to constitute a serious reproach.[1]

The other question is: Does the election machinery prevent intimidation, bribery, personation, repeating, and the other frauds which the agents of candidates or parties seek to perpetrate? Here too, there are great differences between one State and city and another, differences due both to the laws and to the character of the population. Of intimidation there is but little. Repeating and personation are not rare in dense populations

[1] They were specially frequent, and are not extinct, in some of the Southern States, being there used to prevent the negro voters from returning Republican candidates. It was here that the use of "tissue ballots" was most common. I was told in San Francisco that elections had become more pure since the introduction of glass ballot boxes, which made it difficult for the presiding officials to stock the ballot box with voting papers before the voting began in the morning.

where the agents and officials do not, and cannot, know the voters' faces. Of bribery I have spoken elsewhere. It is a sporadic disease, but often intense where it occurs. The ballot laws do little to check it, because "under our present system whole squads of voters are marched to the polls with their ballots in their hands so held that the boss can see them from the time they are received till they are deposited in the ballot boxes."[1] This is a consequence of the free hand which the party agents enjoy in supplying their tickets to the voters.

The plan of leaving the preparation and distribution of ballot papers to the parties has, however, had another, and a very important, result. It has thrown power into the hands of the party organizations, and by supplying an excuse for their activity, and for the expenditure which that activity involves, it has helped to develop the Machine into its portentous predominance. I will endeavour to illustrate this from the case of New York City, basing myself on two able and instructive papers, published in 1887,[2] and whose statements of facts have not, so far as I know, been impugned.

In New York City elections are placed under the control of the Police Board, consisting of four commissioners, two of whom are required by law to be Democrats, two Republicans. The Police Board is directed to appoint annually in each of the 812 election districts of the city—

[1] I quote from an article by Mr. J. B. Bishop, in *Scribner's Magazine* for February 1888. He is speaking of the practice of New York, whose law, excellent as regards the custody and counting of the ballots, has not provided for real secrecy of voting; but his observations are, I believe, applicable to most States. Some, as for instance Wisconsin, have recently amended their law in this point.

[2] By Mr. Ivins, city chamberlain of New York, and Mr. J. B. Bishop. Both papers were originally read before the Commonwealth Club of New York City.

"As inspectors of elections, four persons, two of whom on State issues shall be of different faith and opinion from their associates, and those appointed to represent the party and political minority on State issues to be named solely by such of the commissioners of police in the said police board as are the representatives of such political minority . . . and also as poll clerks two persons of different political faith and opinions on State issues." [1]

There are, accordingly, 4872 election officers, half of them Democrats, half Republicans, each set being appointed by the commissioners of its own party. Here is a solid lump of patronage placed at the disposal of party leaders; for the aggregate salaries of these officials (five days, at $7.50 per day) amounted to nearly $150,000 (£30,000). The selection of shops or other buildings as polling places, and the nomination to a few other offices, increases the patronage arising out of elections. The total cost to the city treasury of its elections was, in 1886, $222,500 (£44,500). Every second year, when there is a Federal election, additional election offices are needed; they also are treated (the appointment being vested in Federal officials) as party patronage, and cost the city an additional $64,100 (£12,800), making altogether $290,000.

"This fund of $290,000 (says Mr. Ivins) is practically used if not to purchase at least to assure and guarantee the vote of at least ten persons for each election district. The election districts will average about 300 voters, so that 3 per cent of the voters are employed in and about elections in accordance with the provisions of law as officers of the law, and the election district leader sees that they are the first men to vote and to vote right.

[1] I quote from Mr. Ivins's paper. This statutory recognition of party as a qualification for office is not unusual in America, having been found necessary to ensure some sort of equal distribution between the parties of the posts of election officers, for the fairness of whose action it was essential that there should be some sort of guarantee. "State issues" are named because the two great parties are usually each of them undivided in State party warfare, but sometimes split into factions in city politics.

"The officials (city and Federal) in whose gift this patronage lies place it at the disposal of the leaders of the Machine. Now there are three Machines in New York; two Democratic, because the Democratic party, commanding a large popular majority, is divided into two factions (Tammany Hall and the County Democracy),[1] and one Republican.

"Each Machine has twenty-four district organizations, corresponding with the twenty-four Assembly districts of the city. Each Assembly district has a committee, but is actually controlled by the Assembly district leader, and the caucus of the Assembly district leaders constitutes the mainspring of the party. It is the source of all authority, and determines all questions of policy. . . . Each Assembly district leader has a representative to look after the election district, commonly called an election district captain. These men are of the utmost importance to the Machine, and an Assembly district leader strives to quarter his election district captains on the city. This he succeeds in doing sooner or later. If the Republicans are out of power in every other department, and cannot take care of 'the boys' [party workers] in any other way, they at least always have three places to dispose of which are worth $7.50 (£1 : 10s.) for five days in each election district. But they are not reduced to this sore necessity. The Democratic leader either finds a place for the friends of the Republican leader, with whom he is co-operating, or when the Republican leader is in power, it is the latter who finds places for his Democratic friends and coadjutors, for the professional or caste feeling is very strong, and politicians of all parties recognize their ultimate community of interests at all times.

"Sooner or later, on the pay rolls of the city, which contain 9955 names, exclusive of school-rolls, or 13,749 all told, which latter figure includes 25 aldermen and 83 chief officers, and excludes all Assembly men, senators, and national officers, at least four men are taken care of by each party all the year round in each of the 812 districts. The Machine, for the purpose of securing their services in perpetuity, thus has the city pay them as city employees. This is particularly the case with regard to the Assembly district leaders. To be sure, the money paid them out of the city,

[1] There is also a third Democratic faction (Irving Hall), much weaker. It can hardly be said to have a regular permanent Machine.

State, or national treasury cannot properly be said to be money spent in elections, but it is money spent in maintaining the solidity and perpetuity of the Machine; it keeps it alive the year round, or ready for all emergencies, and especially for the great critical emergency of the election. Without it each election would find the Machine broken and scattered, and consequently it has to be considered.

"New York City paid its Assembly district leaders last year $330,000, or an average of $4750 for each of the 72 leaders. This figure includes the estimated income of the registrar's office, yielding only $12,000 per year to its chief. The amount which is now being actually received by these leaders from the public treasury is $24,000. Of this amount Tammany Hall gets about $119,000, divided among 18 out of 24 of its district leaders. The County Democracy gets about $90,000, divided among 17 out of 25 of its district leaders. The Republican leaders, being in the minority party, both in the city and nation, do not fare so well; but they have hopes, or have heretofore shared the pay of loyalty. Their $22,000 is divided among 8 of their 24 leaders. It must be said, however, in order to be just, that many of the men among whom these sums are divided are honest and efficient public servants, and the city gets full value for the salaries paid them.

"The aggregate of these sums, say $242,000, may be regarded as the city's permanent investment in the Machines for leadership alone. Certainly not less than $750,000 more is invested in the same way in political captains, heelers, followers, and hangers-on, of whom it must be said also that the great majority render fair service to the city for the salaries paid them. The Machines thus supported all the year round find themselves in good condition to take up the work of organizing a campaign or conducting an election.

. . . . . .

"Prior to election day each party formally, through the action of its leaders in caucus, determines upon how much money shall be allotted by the party as such, for expenditure in each election district, to employ 'workers at the polls' as it is called. These workers at the polls are paid from $5 a day upwards, according to the fund to be drawn upon. The ballots are printed by each Machine for itself, although frequently they will employ the same printer, which has in the past sometimes produced strange results.

. . . . . .

"By their command of the tickets the Assembly district leaders come into possession of the whole of the vital part of the election machinery. They could meet on the night before election and destroy the tickets, and no election could take place. It is the possession of this power which makes them valuable from the point of view of purchase and sale. Many of the Assembly district leaders in the three organizations have been able to exploit this possession so successfully and profitably that they have been able to live throughout the entire year on their income derived from the handling of the tickets. They can destroy, rebunch, fail to distribute, and what not as they please. They rarely if ever take money nominally for dealing with the tickets. It is taken or alleged to be taken for the purpose of securing the distribution or peddling of the tickets at the polls, or, as it is called, for the employment of workers. The result of this system of machinery is that, in order to compete with the professional politicians, it is necessary for any independent body of citizens to have a very complex Machine, and frequently a very expensive one. In the first place, the regular Machine is always equipped and prepared to print as well as to distribute a ticket. These are expensive matters, and the very fact of the expense in this regard alone is a practical deterrent to independent movements for reform. The Machines are always enabled to print the tickets and distribute them by means of assessments levied on candidates and office-holders."

The expense of printing and distributing tickets, and of paying the "workers" who labour for the party at elections, is defrayed out of a fund raised chiefly by assessments levied on candidates, *i.e.* by requiring the candidate to contribute a sum proportioned to the pecuniary value of the office he seeks to obtain. As explained in a preceding chapter, this is practically the purchase of a nomination. Mr. Ivins gives the following estimate of the amount raised. It varies a little from year to year, for example—"in good years, such as that after the sale by the Board of Aldermen of the Broadway franchise (the right of laying down a tramway in Broadway), the Aldermanic office was much sought after."

"An average year would show the following assessments on the basis of two candidates only running in each district, and on the basis of the minimum assessments:—

Two aldermanic candidates at $15 per district for 812 districts	$24,360
Two Assembly candidates at $10 per district for 812 districts	16,240
Two candidates for Senate or Congress at $25 per election district	40,600
Four candidates for judgeships at $10,000 each	40,000
Two candidates for mayor at $20,000 each	40,000
Two candidates for a county office, such as sheriff, county clerk, or registrar, at $10,000	20,000
Two candidates for comptroller at $10,000	20,000
Two candidates for district attorney at $5000	10,000
Or, say a total of	$211,200

"It is a fair estimate, year in and year out, that there is distributed at each polling place in the 812 districts of the city $75 to $100 by the County Democracy, $75 to $100 by Tammany Hall, $40 to $50 by the Republicans, except in presidential years, when the distribution has been much larger, $15 by Irving Hall, and $15 by the representatives of the different independent candidates, making a minimum of $238 per election district, which for 812 election districts would give us a grand total of $216,000 or thereabouts. It is usually calculated that the assessment of candidates will cover this item."

Mr. Ivins estimates the total annual expenditure of the three Machines upon elections at $307,500 (£61,500). The difference between this sum and the $211,000 raised by assessments on candidates, is made up by assessments on office-holders, levies on public contractors, and contributions from the rich men of the party. He estimates the total annual cost of elections in an ordinary (not a presidential) year at $700,000 (£140,000).

"Of this $700,000, $290,000 is contributed by the city for legal expenses; $210,000 is derived from assessments upon

candidates, and $200,000 is obtained by assessments upon office-holders and through contributions from the rich men of the various parties. This money is divided among about 45,000 men, who do the work about the polls. Of this 45,000 about 8000, or ten for each district, are employed by the city. The remaining 37,000, or forty-six for each district, are paid by the political organizations or Machines. It will be seen that it takes nearly five times as many men to do the political as it does to do the legal work."[1]

Mr. Ivins concludes as follows:—"The entire machinery of politics thus pivots round the manner of election, the legal recognition of parties, the ability of parties to levy assessments on office-seekers and office-holders, the practical exclusion, because of the expensiveness of elections, of independent nominations and work, the resulting control of the ballots by Assembly district leaders, and of the distribution of ballots to voters on election day by their subordinates and followers; in a word, this system amounts to a monopoly in the hands of the leaders of the Machines, not only of the power of nomination, but of the elective franchise itself."

Thus the creation of a number of places placed under party patronage enables the professional bosses to reward their followers, and secure a certain number of safe votes. The expense of printing and distributing ballots increases the need for a party Machine, and seems to justify its existence, and it enables the Machine to call for a large fund. The fund is raised by selling nominations and levying contributions on office-holders; and thus the Machines, having a permanent revenue, strengthen their hold on the city. To run independent candidates becomes an extremely difficult and costly enterprise. The city is put to a vast cost, because the assessments paid by candidates and office-holders fall in the long run on the city, which is forced to pay larger salaries than are needed to more officials than are needed for indifferent service, and thus to perpetuate out of its

[1] I take this summary of Mr. Ivins's figures (having been obliged to abridge some of his calculations) from Mr. Bishop's lucid paper, in which, following up Mr. Ivins, he indicates the remedies needed.

corporate purse its own enslavement. The expense, however, is the least part of the evil. Corruption is virtually legalized; and as one-fifth of the voters are under the control of the bosses, these usually have it in their power to determine elections by turning over their "voting stock" as they please, perhaps, as in some recent well-known instances, to the aspirant who promises them a substantial sum.[1]

These things being so, it is not surprising that in several American States—for the case of New York City is only an extreme instance of phenomena observable in other great cities—there have been efforts made to improve the election laws by taking the printing and distribution of ballots out of the hands of the parties, for the purpose of entrusting them to public officers, to repress bribery, and to limit the expenses incurred by or on behalf of candidates. The good effects experienced in England from recent legislation on these subjects have encouraged American reformers to expect great benefits from such laws. A European observer, while coinciding in this view, will conceive that better election laws ought to be accompanied by a reform in the system of partisan appointments for short terms, and if possible by a diminution in the number of administrative places annually awarded at the polls.

NOTE.

I SUBJOIN specimens of "slip tickets" used at recent elections, each, it will be understood, being issued by a party and distributed to its supporters to be deposited by them in the ballot box.

[1] An experienced New York publicist remarks to me that when something approaching a real issue is raised there is less bribery. In the mayoralty election in New York in 1886 very little money passed "because the usually venal classes went straight for the Labor candidate and would not be bought."

The first set were used in an election of State, county, and township officers in Iowa:—

REPUBLICAN STATE TICKET.

For Governor,
WILLIAM LARRABEE,
Of Fayette County.

For Lieutenant-Governor,
JOHN A. T. HULL,
Of Polk County.

For Judge of the Supreme Court,
GIFFORD S. ROBINSON,
Of Buena Vista County.

For Superintendent of Public Instruction,
HENRY SABIN,
Of Clinton County.

REPUBLICAN LEGISLATIVE TICKET.

For Representative, 39th District,
W. H. REDMAN.

REPUBLICAN COUNTY TICKET.

For County Treasurer,
O. L. ROSEMAN.

For County Auditor,
F. W. PORTER.

For Sheriff,
A. M. HOGAN.

For County Superintendent of Schools,
S. W. HEATH.

For County Supervisor,
J. M. BRYAN.

For County Surveyor,
W. T. GRIER.

For Coroner,
HORACE WHITCOMB.

TOWNSHIP TICKET.

For Trustee,
W. O. WILLARD.

For Constable (to fill vacancy),
P. A. TERRELL.

DEMOCRATIC STATE TICKET.

For Governor,
T. J. ANDERSON,
of Marion County.

For Lieutenant-Governor,
J. M. ELDER,
of Hancock County.

For Superintendent of Public Instruction,
H. W. SAWYER,
of Fremont County.

For Judge of the Supreme Court,
CHAS. S. FOGG,
of Guthrie County.

DEMOCRATIC COUNTY TICKET.

For Representative,
JOHN W. JONES.

For Treasurer,
W. T. SHARP.

For Auditor,
O. M. WHEELER.

For Sheriff,
JAMES HANLIN.

For Surveyor,
WM. T. GRIER.

For Superintendent of Schools,
V. W. MACY.

For Coroner,
JAMES CONGER.

For Supervisor,
JOHN A. KING.

TOWNSHIP TICKET.

For Trustee,[1]

For Justice of the Peace,[1]

For Constables,[1]

UNION LABOR STATE TICKET.

For Governor,
M. J. CAIN.

For Lieut.-Governor,
J. R. SOVERREIGN.

For Supt. of Public Instruction.
S. L. TIPTON.

For Judge of Supreme Court.
N. J. JONES.

COUNTY TICKET.

For Representative,
W. M. MEANOR.

For Treasurer,
H. C. BUSWELL.

For Auditor,
C. H. VERBECK.

For Sheriff,
JOHN WOOD.

For Superintendent,
V. W. MACY.

For Supervisor,
JOHN A. KING.

For Coroner,
H. H. LEGG.

For Surveyor,
W. T. GRIER.

TOWNSHIP TICKET.

For Trustee,[1]

For Justice of the Peace.[1]

For Constables,[1]

[1] The spaces left vacant are to be filled up by the voter according to his pleasure.]

The following three tickets were used at an election of city officers in Boston. The original tickets are ornamental articles, executed in various kinds of type; I give here only the names of the candidates:—

WARD TWELVE.

REGULAR DEMOCRATIC TICKET.

[*Here there is a portrait of Mr. O'Brien.*]

For Mayor,
HUGH O'BRIEN.

Copyrighted by M. J. KILEY, Printer, 7 Spring Lane, Boston.

For Street Commissioner,
HUGH E. BRADY.

For School Committee,
RUSSELL D. ELLIOTT,
EDWARD C. CARRIGAN,
JOSEPH T. DURYEA,
JOHN G. BLAKE,
GEORGE R. SWASEY,
JOSEPH D. FALLON,
EMILY A. FIFIELD,
THOMAS O'GRADY, Jr.

For Alderman,
WILLIAM P. CARROL.

For Common Council,
WILLIAM H. WHITMORE,
JAMES J. BURKE,
JOHN J. MULHALL.

We hereby certify that this ballot contains only the names of the regular Democratic nominees, and is issued by the Democratic City Committee of Boston. THOMAS J. BARRY, President. L. J. LOGAN, Chairman Printing Committee.

WARD TWELVE.

REGULAR REPUBLICAN TICKET.

NATHAN SAWYER & SON, Printers, No. 70 State Street, Boston.

This certifies that this Ballot is the regular and genuine Ballot of the Republican Party, to be used at the Election on December 13, 1887, in the City of Boston. JESSE M. GIN, President, Republican City Committee of Boston.

For Mayor,
THOMAS N. HART.

For Street Commissioner,
AUGUSTUS N. SAMPSON.

For School Committee,
JOHN W. PORTER,
JOHN G. BLAKE,
RUSSELL D. ELLIOTT,
GEORGE R. SWASEY,
CHARLES L. FLINT,
EMILY A. FIFIELD,
ABRAM E. CUTTER,
JOSEPH STEDMAN.

For Alderman,
EDWARD J. JENKINS.

For Common Council,
CORNELIUS F. DESMOND,
THOMAS F. TRACY,
JAMES B. HAYES.

WARD TWELVE.

CITIZENS' TICKET.
Dec. 13, 1887.

This ballot contains the names of the regular Citizens' Nomination (Chickering Hall Convention. A. A. BURROGE, Chairman.)

Copyright, 1887, by ALFRED MUDGE & SON, 24 Franklin Street, Boston.

For Mayor,
THOMAS N. HART.

For Street Commissioner,
AUGUSTUS N. SAMPSON.

For School Committee,
JOHN G. BLAKE,
GEORGE R. SWASEY,
EDWARD C. CARRIGAN,
EMILY A. FIFIELD,
JOSEPH T. DURYEA,
CHARLES L. FLINT,
ABRAM E. CUTTER,
JOSEPH STEDMAN.

For Alderman,
EDWARD J. JENKINS.

For Common Council,
JOHN F. MULHALL,
WILLIAM BUNTON,
SAMUEL B. DOGGETT.

On the day when these tickets were used, there were distributed in the streets at the polling-places envelopes containing small slips of paper gummed on the back, and bearing on the front the words following:—

For Common Council, WILLIAM M. WHITMORE.

These were intended to be used by citizens voting the Republican or Citizens' ticket, being pasted by them over the name of one of the common council candidates on either of these tickets, so enabling the Republican or supporter of the Citizens' list to give his vote for Mr. Whitmore, while voting against the rest of the Democratic ticket.

The following three tickets were used at the election of city and school officers in the city of Cambridge, Mass., December 1887. They were all issued by organizations, but not regular party organizations. At the same election a popular vote was taken on the question whether licences for the sale of intoxicants should be granted in the city.

Shall Licences be granted for the sale of Intoxicating Liquors in this City?

NO.

Shall Licences be granted for the sale of Intoxicating Liquors in this City?

YES.

"PAY AS YOU GO" CONVENTION!

Regular Nominations.

L. M. HANNUM, Chairman.
GEORGE G. WRIGHT, Secy.

For Mayor,
WILLIAM E. RUSSELL.

For Aldermen,
ALEXANDER MILLAN,
WARREN IVERS,
FRED. H. HOLTON,
FRANK H. TEELE,
HENRY A. DOHERTY,
WILLIAM T. NEILON,
DANIEL E. FRASIER,
JOHN H. CORCORAN,
CHARLES F. STRATTON,
SOLOMON S. SLEEPER.

For Principal Assessor,
JOSHUA G. GOOCH.

For Assistant Assessors,
CHARLES H. HUNNEWELL,
Ward One.
WILLIAM J. MARVIN,
Ward Two.
GEORGE L. MITCHELL,
Ward Three.
JOHN LENNON,
Ward Four.
THOMAS F. CAHIR,
Ward Five.

For School Committee,
JOHN L. HILDRETH,
(For full Term)
Ward One.
ALICE M. LONGFELLOW,
(For unexpired Term)
Ward One.
ALPHONSO E. WHITE,
Ward Two.
RICHARD J. McKELLEGET,
Ward Three.
WILLIAM H. ORCUTT,
(For full Term)
Ward Four.
MOSES D. CHURCH,
(For unexpired term)
Ward Four.
GEORGE A. ALLISON,
Ward Five.

WARD ONE.

For Members of the Common Council,
WILLIAM H. EVELETH,
JOHN H. H. McNAMEE,
GEORGE E. CARTER,
WILLIAM T. PIPER.

WORKINGMEN'S TICKET.

1887.

For Mayor,
EDGAR R. CHAMPLIN.

For Aldermen,
EDWARD W. HINCKS,
P. ALLEN LINDSEY,
JOSEPH J. KELLEY,
JOHN H. CORCORAN,
ISAAC McLEAN,
SAMUEL W. McDANIEL,
COLIN CHISHOLM,
WILLIAM T. NEILON,
ROBERT B. BANCROFT,
HENRY A. DOHERTY.

For Assessor,
JOSHUA G. GOOCH.

For Assistant Assessors,
Ward One,
JAMES GRANT.
Ward Two,
WILLIAM J. MARVIN.
Ward Three,
GEORGE L. MITCHELL.
Ward Four,
JOHN LENNON.
Ward Five,
SYLVANUS M. PARSONS.

For School Committee,
Ward One,
EMERY BEMIS.
Ward One,
ALICE M. LONGFELLOW,
2 years.
Ward Two,
JOHN S. PAINE.
Ward Three,
JOHN H. PONCE.
Ward Four,
JOHN CURTIS NICHOLS.
Ward Four,
MOSES D. CHURCH, 1 year.
Ward Five,
GEORGE A. ALLISON.

For Common Council,
WILLIAM H. EVELETH,
EDGAR O. KINSMAN,
JOHN H. H. McNAMEE,
GEORGE E. CARTER.

TAX PAYERS' TICKET.

1887.

[*Here there is a portrait of Mr. Champlin.*]

For Mayor,
EDGAR R. CHAMPLIN.

For Aldermen,
EDWARD W. HINCKS,
P. ALLEN LINDSEY,
JOSEPH J. KELLEY,
DANIEL E. FRASIER,
ISAAC McLEAN,
SAMUEL W. McDANIEL,
COLIN CHISHOLM,
WILLIAM T. NEILON,
ROBERT B. BANCROFT,
BENJAMIN F. ATWOOD.

For Assessor,
JOSHUA G. GOOCH.

For Assistant Assessors,
Ward One,
JAMES GRANT.
Ward Two,
WILLIAM S. MARVIN.
Ward Three,
GEORGE L. MITCHELL.
Ward Four,
JOHN LENNON.
Ward Five,
SYLVANUS M. PARSONS.

For School Committee,
Ward One,
EMERY BEMIS.
Ward One,
ALICE M. LONGFELLOW,
2 years.
Ward Two,
JOHN S. PAINE.
Ward Three,
JOHN H. PONCE.
Ward Four,
JOHN CURTIS NICHOLS.
Ward Four,
MOSES D. CHURCH, 1 year.
Ward Five,
GEORGE A. ALLISON.

For Common Council,
WILLIAM H. EVELETH,
EDGAR O. KINSMAN,
JOHN H. H. McNAMEE,
GEORGE E. CARTER.

The following comments on this Cambridge election made by a Cambridge newspaper next day state the result, and explain the use of "pasters" or "stickers":—

RUSSELL AND "NO!"

MAYOR RUSSELL'S MAJORITY 1917.

Five Hundred and Sixty-Six Majority for No-Licence.

"Mayor Russell received an emphatic endorsement at the polls on Tuesday and was returned to the mayor's chair by the handsome majority of 1917. No-licence also came off triumphant with the same majority as last year, viz. 566, which is a remarkable coincidence. The vote polled was unprecedentedly large, there being nearly 8200 votes cast out of a total registration of about 9500. The interest in the licence question was largely responsible for this, the temperance people having done their utmost to bring out every friend of the cause, while the licence people struggled with tremendous energy for the success of their side.

"The Russell ticket was, in the main, successful right through. The aldermanic exceptions were the election of Hincks in Ward One, in place of Ivers, and of Lindsey in Ward Two, instead of Holton. Both of these successful candidates are members of this year's board and were upon the Champlin ticket. Their election is not a surprise nor is it a victory for the Champlin ticket, as they could probably have been elected had they run independently. It will be remembered that there was a strong effort made to nominate both these men in the Russell convention. The election of General Hincks is regarded as an effective offset to the attack made upon him in the convention. He received a very large vote, and stood eighth in the list of those elected. Alderman Lindsey defeated Alderman Holton by 78 votes only, and the majority is so small that there will be a recount. Holton's defeat is due to the free use of stickers in Ward Three. Ivers, whom General Hincks defeated, stood twelfth on the aldermanic list in the size of his vote. He was scratched badly in East Cambridge, where Hincks pasters were freely used. The largest vote cast was that for Neilon for alderman, viz. 7440. He was on both tickets. Frasier, who was also on both tickets, received 6872 votes."—*Cambridge Tribune*, 10th December 1887.

CHAPTER LXVII

CORRUPTION

No impression regarding American politics is more generally diffused in Europe than that contained in the question which the traveller who has returned from the United States becomes so weary of being asked, "Isn't everybody corrupt there?" It is an impression for which the Americans themselves, with their airy way of talking about their own country, their fondness for broad effects, their enjoyment of a good story and humorous pleasure in exaggerations generally, are largely responsible. European visitors who, generally belonging to the wealthier classes, are generally reactionary in politics, and glad to find occasion for disparaging popular government, eagerly catch up and repeat the stories they are told in New York or San Francisco. European readers take literally the highly-coloured pictures of some American novels and assume that the descriptions there given of certain men and groups "inside politics"—descriptions legitimate enough in a novel—hold true of all men and groups following that unsavoury trade. Europeans, moreover, and Englishmen certainly not less than other Europeans, have a useful knack of forgetting their own shortcomings when contemplating those of their neighbours; so you may hear

men wax eloquent over the depravity of transatlantic politicians who will sail very near the wind in giving deceptive pledges to their own constituents, who will support flagrant jobs done on behalf of their own party, who will accept favours from, and dine with, and receive at their own houses, financial speculators and members of the legislature whose aims are just as base, and whose standard is just as low as those of the worst congressman that ever came to push his fortune in Washington.

I am sensible of the extreme difficulty of estimating the amount of corruption that prevails in the United States. If a native American does not know—as few do—how deep it goes nor how widely it is spread, much less can a stranger. I have, however, submitted the impressions I formed to the judgment of some fair-minded and experienced American friends, and am assured by them that these impressions are substantially correct; that is to say, that they give a view of the facts such as they have themselves formed from an observation incomparably wider than that of a European traveller could be.

The word "corruption" needs to be analysed. It is used to cover several different kinds of political unsoundness.

One sense, the most obvious, is the taking or giving of money bribes. Another sense is the taking or giving of bribes in kind, *e.g.* the allotment of a certain quantity of stock or shares in a company, or of an interest in a profitable contract, or of a land grant. The offence is essentially the same as where a money bribe passes, but to most people it does not seem the same, partly because the taking of money is a more unmistakable selling of one's self, partly because it is usually uncertain how the bribe given in kind will turn out, and a man excuses himself by thinking that its value will depend on how

he develops the interest he has obtained. A third sense of the word includes the doing of a job, *e.g.* promising a contractor that he shall have the clothing of the police or the cleaning of the city thoroughfares in return for his political support; giving official advertisements to a particular newspaper which puffs you; promising a railroad president, whose subscription to party funds is hoped for, to secure the defeat of a bill seeking to regulate the freight charges of his road or threatening its land grants. These cases shade off into those of the last preceding group, but they seem less black, because the act done is one which would probably be done anyhow by some one else from no better motive, and because the turpitude consists not in getting a private gain but in misusing a public position to secure a man's own political advancement. Hence the virtue that will resist a bribe will often succumb to these temptations.

There is also the sense in which the bestowal of places of power and profit from personal motives is said to be a corrupt exercise of patronage. Opinion has in all countries been lenient to such action when the place is given as a reward of party services, but the line between a party and a personal service cannot be easily drawn.

Then, lastly, one sometimes hears the term stretched to cover insincerity in professions of political faith. To give pledges and advocate measures which one inwardly dislikes and deems opposed to the public interest is a form of misconduct which seems far less gross than to sell one's vote or influence, but it may be, in a given instance, no less injurious to the state.

Although these two latter sets of cases do not fall within the proper meaning and common use of the word corruption, it seems worth while to mention them, because derelictions of duty which a man thinks trivial

in the form with which custom has made him familiar in his own country, where perhaps they are matter for merriment, shock him when they appear in a different form in another country. They get mixed up in his mind with venality, and are cited to prove that the country is corrupt and its politicians profligate. A European who does not blame a minister for making a man governor of a colony because he has done some back-stairs parliamentary work, will be shocked at seeing in New York some one put into the custom-house in order that he may organize primaries in the district of the congressman who has got him the place. English members of Parliament condemn the senator who moves a resolution intended to "placate" the Irish vote, while they forget their own professions of ardent interest in schemes which they think economically unsound but likely to rouse the flagging interest of the agricultural labourer. Distinguishing these senses in which the word corruption is used, let us attempt to inquire how far it is chargeable on the men who compose each of the branches of the American Federal and State Government.

No President has ever been seriously charged with pecuniary corruption. The Presidents have been men very different in their moral standard, and sometimes neither scrupulous nor patriotic, but money or money's worth they have never touched for themselves, great as the temptations must have been to persons with small means and heavy expenses. They have doubtless often made bad appointments from party motives, have sought to strengthen themselves by the use of their patronage, have talked insincerely and tolerated jobs; but all these things have also been done within the last thirty years by sundry English, French, and Italian prime ministers, some of whom have since been canonized.

The standard of honour maintained by the Presidents has not always been maintained by the leading members of recent administrations, several of whom have been suspected of complicity in railroad jobs, and even in frauds upon the revenue. They may not have, probably they did not, put any part of the plunder into their own pockets, but they have winked at the misdeeds of their subordinates, and allowed the party funds to be replenished, not by direct malversation, yet by rendering services to influential individuals or corporations which a strict sense of public duty would have forbidden. On the other hand, it is fair to say that there seems to be no case since the war—although there was a bad case in President Buchanan's Cabinet just before the war—in which a member of the Cabinet has received money, or its equivalent, as the price of either an executive act or an appointment, while inferior officials, who have been detected in so doing (and this occasionally happens), have been dismissed and disgraced.[1]

Next, as to Congress. It is particularly hard to discover the truth about Congress, for few of the abundant suspicions excited and accusations brought against senators or members of the House have been, or could have been, sifted to the bottom. Among four hundred men there will be the clean and the unclean. The opportunities for private gain are large, the chances of detection small; few members keep their seats for three or four successive congresses, and one half are changed every two years, so the temptation to make hay while the sun shines is all the stronger.

There are several forms which temptation takes in

[1] The so-called Whisky Ring of 1875 and the Star Route gang of more recent times are perhaps the most conspicuous instances of misconduct in the civil service.

the Federal legislature. One is afforded by the position a member holds on a committee. All bills and many resolutions are referred to some one of the committees, and it is in the committee-room that their fate is practically decided. In a small body each member has great power, and the exercise of power (as observed already[1]) is safeguarded by little responsibility. He may materially advance a bill promoted by an influential manufacturer, or financier, or railroad president. He may obstruct it. He may help, or may oppose, a bill directed against a railroad or other wealthy corporation, which has something to gain or lose from Federal legislation.[2] No small part of the business of Congress is what would be called in England private business; and although the individual railroads which come directly into relation with the Federal government are not numerous,—the great transcontinental lines which have received land grants or other subventions are the most important,—questions affecting these roads do frequently come up and involve large amounts of money. The tariff on imports opens another enormous sphere in which legislative intervention affects private pecuniary interests; for it makes all the difference to many sets of manufacturers whether duties on certain classes of goods are raised, or maintained, or lowered. Hence the doors of Congress are besieged by a whole army of commercial or railroad men and their agents, to whom, since they have come to form a sort of profession, the name of Lobbyists is

[1] See Chapter XV. in Vol. I. on the Committees of Congress.

[2] I remember to have heard of the governor of a western Territory who, when he came east, used to borrow money from the head of a great railway which traversed his Territory, saying he would oblige the railway when it found occasion to ask him. His power of obliging included the right to veto bills passed by the Territorial legislature. This governor was an ex-boss of an Eastern State whom his party had provided for by bestowing the governorship on him.

given.[1] Many congressmen are personally interested, and lobby for themselves among their colleagues from the vantage-ground of their official positions.

Thus a vast deal of solicitation and bargaining goes on. Lobbyists offer considerations for help in passing a bill which is desired or in stopping a bill which is feared. Two members, each of whom has a bill to get through, or one of whom desires to prevent his railroad from being interfered with while the other wishes the tariff on an article which he manufactures kept up, make a compact by which each aids the other. This is Log-rolling: You help me to roll my log, which is too heavy for my unaided strength, and I help you to roll yours. Sometimes a member brings in a bill directed against some railroad or other great corporation, merely in order to levy blackmail upon it. This is technically called a Strike. An eminent railroad president told me that for some years a certain senator regularly practised this trick. When he had brought in his bill he came straight to New York, called at the railroad offices, and asked the president what he would give him to withdraw the bill. That the Capitol and the hotels at Washington are a nest of such intrigues and machinations, while Congress is sitting, is admitted on all hands; but how many of the members are tainted no one can tell. Sometimes when money passes it goes not to the member of Congress himself, but to some Boss who can and does put pressure on him. Sometimes, again, a lobbyist will demand a sum for the purpose of bribing a member who is really honest, and, having ascertained that the member is going to vote in the way desired, will keep the sum in his own pocket. Bribery often takes the form of a transfer of stocks

[1] See *ante*, Note (B) to Chapter XVI. in Appendix to Vol. I.

or shares, nor have even free passes on railroads been scorned by some of the more needy legislators. The abuse on this head had grown so serious that the bestowal of passes on inter-State lines was forbidden by statute in 1887.[1] In the end of 1883 portions of a correspondence in the years 1876-78 between Mr. Huntington, one of the proprietors and directors of the Central Pacific Railroad, who then represented that powerful corporation at Washington, and one of his agents in California, were published; and from these it appeared that the company, whose land grants were frequently threatened by hostile bills, and which was exposed to the competition of rival enterprises, which (because they were to run through Territories) Congress was asked to sanction, defended itself by constant dealings with senators and representatives—dealings in the course of which it offered money and bonds to those whose support it needed. Mr. Huntington comments freely on the character of various members of both Houses, and describes not only his own operations, but those of Mr. Scott, his able and active opponent, who had the great advantage of being able to command passes on some railways running out of Washington.[2]

[1] All lines traversing the territory of more than one State are subject to the power of Congress to "regulate commerce." As to free passes see the instructive remarks of the Inter-State Commerce Commission in their First Report.

[2] In one letter Mr. Huntington uses a graphic and characteristic metaphor: "Scott has switched off (*i.e.* off the Central Pacific track and on to his own railroad track) Senators S. and W., but you know they can be switched back with the proper arrangements when they are wanted." In another he observes (1878), "I think in all the world's history never before was such a wild set of demagogues honoured by the name of Congress. We have been hurt sore, and some of the worst bills have been defeated; but we cannot stand many such Congresses."

The recently-issued Report of the U.S. Pacific Railway Commission says of these transactions, "There is no room for doubt that a large portion of the sum of $4,818,000 was used for the purpose of influencing

It does not seem, from what one hears on the spot, that money is often given, or, I should rather say, it seems that the men to whom it is given are few in number. But considerations of some kind pretty often pass,[1] so that corruption in both the first and second of the above senses must be admitted to exist and to affect a portion, though only a small portion of Congress.[2] A position of some delicacy is occupied by eminent lawyers who sit in Congress and receive retainers from powerful corporations whose interests may be affected by congressional legislation, retainers for which they are often not expected to render any forensic service.[3] There are various ways in which members of Congress can use their position to advance their personal interests. They have access to the executive, and can obtain favours from it; not so much because the executive cares what legislation they pass, for it has little to do with legislation, but that the members of the Cabinet are on their promotion, and anxious to stand well with persons whose influence covers any considerable local area, who may perhaps be even able to control the delegation of a State in a nominating convention. Hence a senator

legislation and of preventing the passage of measures deemed to be hostile to the interests of the company, and for the purpose of influencing elections. It is impossible to read the extracts from the letters written by Mr. Huntington himself without reaching the conclusion that large sums were expended by him in efforts to defeat the passage of various bills pending in Congress."—Report, p. 84.

[1] The president of a great Western railroad told me that members of Congress used to come to the company's office to buy its land, and on seeing the price-list would say, "But isn't there a discount? Surely you can give the land cheaper to a friend. You know I shall be your friend in Congress," and so forth.

[2] Among the investigations which disclosed the existence of bribery among members of Congress, the most prominent are those of the Credit Mobilier and the Pacific Mail cases.

[3] This has been forbidden by a statute of 1886 as regards railroads having Federal land grants.

or congressman may now and then sway the executive towards a course it would not otherwise have taken, and the resulting gain to himself, or to some person who has invoked his influence, may be an illicit gain, probably not in the form of money, but as a job out of which something may be made. Again, it has been hitherto an important part of a member's duty to obtain places for his constituents in the Federal civil service. There are about 120,000 of such places. Here is a vast field, if not for pecuniary gain, for appointments are not sold, yet for the gratification of personal and party interests. Nor does the mischief stop with the making of inferior appointments, for the habit of ignoring public duty which is formed blunts men's sense of honour, and makes them more apt to yield to some grosser form of temptation. Similar causes produced similar effects during last century in England, and it is said that the French legislature now suffers from the like malady, members of the Chamber being incessantly occupied in wheedling or threatening the Executive into conferring places or decorations upon their constituents.

The rank and file of the Federal civil service attain a level of integrity as high as that of England or Germany. The State civil service is comparatively small, and in most States one hears little said against its purity. Taking one part of the country with another, a citizen who has business with a government department, such as the customs or excise, or with a State treasurer's office, or with a poor law or school authority, has as much expectation of finding honest men to deal with as he has of finding trustworthy agents to conduct a piece of private commercial business. Instances of dishonesty are more noticed when they occur in a public department, but I do not think they are more frequent.

It is hard to form a general judgment regarding the State legislatures, because they differ so much among themselves. Those of Massachusetts, Vermont, and several of the North-western States, such as Michigan, are pure, *i.e.* the members who would take a bribe are excessively few, and those who would push through a job for some other sort of consideration a small fraction of the whole.[1] On the other hand, New York and Pennsylvania have so bad a name that people profess to be surprised when a good act passes, and a strong governor is kept constantly at work vetoing bills corruptly obtained or mischievous in themselves. Several causes have contributed to degrade the legislature of New York State. It is comparatively small in number, the Assembly having but 128 members, the Senate 32. It includes, besides New York and Brooklyn, several smaller ring-governed cities whence bad members come. It has to deal with immensely powerful corporations, such as the great railroads which traverse it on their way to the West. These corporations are the bane of State politics, for their management is secret, being usually in the hands of one or two capitalists, and their wealth is so great that they can offer bribes at which ordinary virtue grows pale. There are many honest men in the Assembly, and a few are rich men who do not need a *douceur*, but the proportion of tainted men is large enough to pollute the whole lump. Of what the bribe-taker gets he keeps a part for himself, using the rest to buy the doubtful votes of purchaseable people; to others he promises his assistance when they need it, and when by such log-rolling he has secured a considerable back-

[1] The Territorial legislatures vary greatly from time to time: they are sometimes quite pure; another election under some demagogic impulse may bring in a crowd of mischievous adventurers.

ing, he goes to the honest men, among whom, of course, he has a considerable acquaintance, puts the matter to them in a plausible way—they are probably plain farmers from the rural districts—and so gains his majority. Each great corporation keeps an agent at Albany, the capital of the State, who has authority to buy off the promoters of hostile bills, and to employ the requisite professional lobbyists. Such a lobbyist, who may or may not be himself a member, bargains for a sum down, $5000 or $10,000 (£1000 or £2000), in case he succeeds in getting the bill in question passed or defeated, as the case may be; and when the session ends he comes for his money, and no questions are asked. This sort of thing now goes on, or has lately gone on, in several other States, though nowhere on so grand a scale. Virginia, Maryland, California, Illinois, Missouri, are all more or less impure; Louisiana is said to be now worse than New York. But the lowest point was reached in some of the Southern States shortly after the war, when, the negroes having received the suffrage, the white inhabitants were still excluded as rebels, and the executive government was conducted by Northern carpet-baggers under the protection of Federal troops. In some States the treasury was pilfered; huge State debts were run up; negroes voted farms to themselves; all kinds of robbery and jobbery went on unchecked. South Carolina, for instance, was a perfect Tartarus of corruption, as much below the Hades of Illinois or Missouri as the heaven of ideal purity is above the ordinary earth of Boston and Westminster.[1] In its legislature there was an old darkey, jet black and with venerable white hair, a Methodist preacher, and influential among his brother

[1] Τόσσον ἔνερθ' Αἴδεω ὅσον οὐρανός ἐστ' ἀπὸ γαίης.

statesmen, who kept a stall for legislation, where he dealt in statutes at prices varying from $100 to $400. Since those days there has been a peaceful revolution for the better at the South, but some of its legislative bodies have still much leeway to make up.

Of city governments I have spoken in previous chapters. They begin to be bad when the population begins to exceed 100,000, and includes a large proportion of recent immigrants. They are generally pure in smaller places, that is to say, they are as pure as those of an average English, French, or German city.

The form which corruption usually takes in the populous cities is the sale of "franchises" (especially monopolies in the use of public thoroughfares),[1] the jobbing of contracts, and the bestowal of places upon personal adherents, both of them faults not unknown in large European municipalities, and said to be specially rife in Paris, though no rifer than under Louis Napoleon, when the reconstruction of the city under Prefect Haussman provided unequalled opportunities for the enrichment of individuals at the public expense. English vestries, local boards, and even, though much more rarely, town councils, do some quiet jobbery. No European city has, however, witnessed scandals approaching those of New York or Philadelphia, where the public till has been robbed on a vast scale, and accounts have been systematically cooked to conceal the thefts.

Last of all we come to the ordinary voter and the question of bribery at elections. Here, again, there is the widest possible difference between different regions of the country. The greater part of the Union is pure, as pure as Scotland, where from 1868 till 1885 there

[1] The most notorious recent case is the sale by the New York aldermen of the right to lay a tramway in Broadway. Nearly the whole number were indicted and some were punished by imprisonment.

was only one election petition for alleged bribery. Other parts are no better than the small boroughs of Southern England were before the Corrupt Practices Act of 1883.[1] No place, however, not even the poorest ward in New York City, sinks below the level of such constituencies as Yarmouth, Sandwich, or Canterbury were in England. Bribery is not practised in America in the same way as it was recently in some parts of England, or as anciently at Rome, by distributing small sums among a large mass of poor electors, or even, as in many English boroughs, among a section of voters (not always the poorest) known to be venal, and accustomed to reserve their votes till shortly before the close of the poll. The American practice has been to give sums of from $20 to $50 (£4 to £10) to an active local "worker," who undertakes to bring up a certain number of voters, perhaps twenty or thirty, whom he "owns" or can get at. He is not required to account for the money, and probably spends very little of it in direct bribes, though something in drinks to the lower sort of elector. This kind of expenditure belongs rather to the category of paid canvassing than of bribery, yet sometimes the true European species occurs. In a New Hampshire town not long ago, $10 (£2) were paid to each of two hundred doubtful voters. In some districts of New York the friends of a candidate will undertake, in case he is returned, to pay the rent of the poorest voters who occupy tenement houses, and the candidate subsequently makes up the amount.[2] The expenses of congressional

[1] After the election of 1880 no less than 95 petitions were presented impugning elections on the ground of some form of corruption, and many were sustained. After the election of 1886 there was not a single petition. This improvement must, however, be in great measure ascribed to the Redistribution Act of 1885, which destroyed the small boroughs.

[2] At a recent election in Brooklyn a number of coloured voters sat

and presidential elections are often heavy, and though the larger part goes in organization and demonstrations, meetings, torchlight processions, and so forth, a part is likely to go in some illicit way. A member of Congress for a poor district in a great city told me that his expenses ran from $8000 up to $10,000 (£1600 to £2000), which is just about what a parliamentary contest used to cost in an English borough constituency of equal area. In America the number of voters in a constituency is more than five times as great as it now is in England, but the official expenses of polling-booths and clerks are not borne by the candidate. In a corrupt district along the Hudson River above New York I have heard of as much as $50,000 (£10,000) being spent at a single congressional election, when in some other districts of the State the expenses did not exceed $2000 (£400). In a presidential election great sums are spent in doubtful, or, as they are called, "pivotal" States. Indiana was "drenched with money" in 1880, much of it contributed by great corporations, yet one is told that little of this went in bribery. How much ever does go it is the harder to determine, because elections are rarely impeached on this ground, both parties tacitly agreeing that bygones shall be bygones; and experience having shown not only the extreme difficulty of proof but the tediousness of investigation, which may not be over till half the term of Congress has run out.

Well-informed Americans do not consider bribery at elections to be a growing evil in their country. Serious it is, but not comparable for the mischief it does either to Bossism or to election frauds. Probably the disease is no more diffused than in England before 1883.

(literally) on the fence in front of the polling booths, waiting to be bought, but were disappointed, the parties having agreed not to buy them.

In most rural districts it is practically unknown: the only thing approaching it is the farmer's notion, that when he drives in five or six miles to a polling place he ought to get his dinner for nothing.

On a review of the whole matter, the following conclusions may be found not very wide of the truth.

Bribery exists in Congress, but is confined to a few members, say five per cent of the whole number. It is more common in the legislatures of a few, but only a few States, practically absent from the higher walks of the Federal civil service and among the chief State officials, rare among the lower officials, unknown among the Federal judges, rare among State judges.[1]

The taking of other considerations than money, such as a share in a lucrative contract, or a railway pass, or a "good thing" to be secured for a friend, prevails among legislators to a somewhat larger extent. Being less coarsely palpable than the receipt of money, it is thought more venial. One may roughly conjecture that from fifteen to twenty per cent of the members of Congress or of an average State legislature would allow themselves to be influenced by inducements of this kind.

Malversation of public funds occurs occasionally in cities, rarely among Federal or State officers.

Jobbery of various kinds, *i.e.* the misuse of a public position for the benefit of individuals, is pretty frequent. It is often disguised as a desire to render some service to the party, and the same excuse is sometimes found for a misappropriation of public money.

Patronage is usually dispensed with a view to party

[1] One hears senators often charged with buying themselves into the Senate; but, so far as I could ascertain, it rarely happens that a candidate for the Senate bribes members of the State legislature, though probably he often makes heavy contributions to the party election fund, out of which the election expenses of the members of the party dominant in the State legislature are largely defrayed.

considerations or to win personal support. But this remark is equally true of England and France, the chief difference being that owing to the short terms and frequent removals the quantity of patronage is relatively greater in the United States.

If this is not a bright picture, neither is it so dark as that which most Europeans have drawn, and which the loose language of many Americans sanctions. What makes it seem dark is the contrast between the deficiencies which the government shows in this respect, and the excellence, on the one hand of the frame of the Constitution, on the other of the tone and sentiment of the people. The European reader may, however, complain that the picture is vague in its outlines. I cannot make it more definite. The facts are not easy to ascertain, and it is hard to say what standard one is to apply to them. In the case of America men are inclined to apply an ideal standard, because she is a republic, professing to have made a new departure in politics, and setting before her a higher ideal than most European monarchies. Yet it must be remembered that in a new and large country, where the temptations are enormous and the persons tempted have many of them no social position to forfeit, the conditions are not the most favourable to virtue. If, recognizing the fact that the path of the politician is in all countries thickly set with snares, we leave ideals out of sight and try America by an actual standard, we shall find that while her legislative bodies fall below the level of purity maintained in England and Germany, probably also in France and Italy, her Federal and State administration, in spite of the evils flowing from an uncertain tenure, is not, in point of integrity, at this moment sensibly inferior to the administrations of European countries.

CHAPTER LXVIII

THE WAR AGAINST BOSSDOM

It must not be supposed the inhabitants of Ring-ruled cities tamely submit to their tyrants. The Americans are indeed, what with their good nature and what with the preoccupation of the most active men in their private business, a long-suffering people. But patience has its limits, and when a Ring has pushed paternal government too far, an insurrection may break out. Rings have generally the sense to scent the coming storm, and to avert it by making two or three good nominations, and promising a reduction of taxes. Sometimes, however, they hold on their course fearless and shameless, and then the storm breaks upon them.

There are several forms which a reform movement or other popular rising takes. The recent history of great cities supplies examples of each. The first form is an attack upon the primaries. They are the key of a Ring's position, and when they have been captured their batteries can be turned against the Ring itself. When an assault upon the Bosses is resolved upon, the first thing is to form a committee. It issues a manifesto calling on all good citizens to attend the primaries of their respective wards, and there vote for delegates opposed to the Ring. The newspapers take the matter

up, and repeat the exhortation. As each primary is held, on the night fixed by the ward committee of the regular (that is the Ring) organization, some of the reformers appear at it, and propose a list of delegates, between whom and the Ring's list a vote of the members of the primary is taken. This may succeed in some of the primaries, but rarely in a majority of them; because (as explained in a previous chapter) the rolls seldom or never include the whole party voters of the ward, having been prepared by the professionals in their own interest. Sometimes only one-fourth or one-fifth of the voters are on the primary roll, and these are of course the men on whom the Ring can rely. Hence, even if the good citizens of the district, obeying the call of patriotism and the Reform Committee, present themselves at the primary, they may find so few of their number on the roll that they will be outvoted by the ringsters. But the most serious difficulty is the apathy of the respectable, steady-going part of the population to turn out in sufficient numbers. They have their engagements of business or pleasure to attend to, or it is a snowy night and their wives persuade them to stay indoors. The well-conducted men of small means are an eminently domestic class, who think they do quite enough for the city and the nation if they vote at the polls. It is still more difficult to induce the rich to interest themselves in confessedly disagreeable work. They find themselves at a primary in strange and uncongenial surroundings. Accustomed to be treated with deference in their counting-house or manufactory, they are jostled by a rough crowd, and find that their servants or workmen are probably better known and more influential than they are themselves. They recognize by sight few of the persons present, for, in a city, acquaintance does not go by prox-

imity of residence, and are therefore at a disadvantage for combined action, whereas the professional politicians are a regiment where every private in each company knows his fellow-private and obeys the officers. Hence, the best, perhaps the only chance of capturing a primary is by the action of a group of active young men who will take the trouble of organizing the movement by beating up the members of the party who reside in the district, and bearding the local bosses in the meeting. It is a rough and toilsome piece of work, but young men find a compensation in the fun which is to be had out of the fight; and when a victory is won, theirs is the credit. To carry a few primaries is only the first step. The contest has to be renewed in the convention, where the odds are still in favour of the professionals, who "know the ropes" and may possibly outwit even a majority of Reform delegates. The managing committee is in their hands, and they can generally secure a chairman in their interests. Experience has accordingly shown that this method of attacking the Machine very rarely succeeds: and though the duty of attending the primaries continues to be preached, the advice shares the fate of most sermons. Once in a way, the respectable voter will rouse himself, but he cannot be trusted to continue to do so year after year. He is like those citizen-soldiers of ancient Greece who would turn out for a summer inroad into the enemy's country, but refused to keep the field through the autumn and winter.

A second expedient, which may be tried instead of the first, or resorted to after the first has been tried and failed, is to make an independent list of nominations and run a separate set of candidates. If this strategy be resolved on, the primaries are left unheeded; but when the election approaches, a committee is formed

which issues a list of candidates for some or all of the vacant offices in opposition to the "regular" list issued by the party convention, and conducts the agitation on their behalf. This saves all trouble in primaries or conventions, but involves much trouble in elections, because a complete campaign corps has to be organized, and a campaign fund raised.[1] Moreover, the average voter, not having followed politics closely enough to comprehend his true duty and interest, and yielding to his established party habits, inclines, especially in State and Federal elections, to vote the "regular ticket." He starts with a certain prejudice against those who are "troubling Israel" by dividing the party, because he sees that in all probability the result will be not to carry the Independent ticket, but to let in the candidates of the opposite party. Hence the bolting Independents can rarely hope to carry so large a part of their own party with them as to win the election. The result of their action will rather be to bring in the candidates of the other side, who may be no better than the men on the ticket of their own Ring. Accordingly reformers have become reluctant to take this course, for though it has the merit of relieving their feelings, it exposes them to odium, involves great labour, and effects nothing more than may be obtained by one or other of the two methods which I have next to describe.

The third plan is to abstain from voting for the

[1] "To run an anti-machine candidate for mayor it is necessary to organize a new machine at an expense of from $60,000 to $100,000 (£12,000 to £20,000), with a chance of his being 'sold out' then by the men who are hired to distribute his ballots."—Mr. J. B. Bishop in the paper on "Money in City Elections," already cited. Some one has said that the difference between running as a regular candidate and running on your own account as an independent candidate, is like the difference between travelling by railway, and making a new railway of your own to travel by.

names on your party ticket to whom you object. This is Scratching. You are spared the trouble of running candidates of your own, but your abstention, if the parties are nearly balanced, causes the defeat of the bad candidates whom your own party puts forward, and brings in those of the other party. This is a good plan when you want to frighten a Ring, and yet cannot get the more timid reformers to go the length of voting either an independent ticket or the ticket of the other party. It is employed when a Ring ticket is not bad all through, but contains some fair names mingled with some names of corrupt or dangerous men. You scratch the latter and thereby cause their defeat; the others, receiving the full strength of the party, are carried.

If, however, indignation against a dominant Ring has risen so high as to overcome the party predilections of ordinary citizens, if it is desired to administer condign and certain punishment to those who have abused the patience of the people, the reformers will take a more decided course. They urge their friends to vote the ticket of the opposite party, either entire or at least all the better names on it, thus ensuring its victory. This is an efficient method, but a desperate one, for you put into power a Ring of the party which you have been opposing all your life, and whose members are possibly quite as corrupt as those of the Ring which controls your own party. The gain you look for is not therefore the immediate gain of securing better city government, but the ultimate gain of raising the general practice of politics by the punishment of evil-doers. Hence, whenever there is time to do so, the best policy is for the reformers to make overtures to the opposite party, and induce them by the promise of support to nominate better candidates than they would have

nominated if left to themselves. A group of Bolters afraid of being called traitors to their party, will shrink from this course; and if they are weak in numbers, their approaches may be repulsed by the opposition. But the scheme is always worth trying, and has several times been crowned with success. By it the reforming party among the Democrats of Baltimore recently managed to defeat their Ring in an election of judges. They settled in conference with the Republicans a non-partisan ticket, which gave the Republicans (who were a minority) a better share of the bench than they could have got by fighting alone, and which substituted respectable Democrats for the objectionable names on the regular Democratic ticket. A similar combination of the reform Republicans in Philadelphia with the Democrats, who in that city are in a permanent minority, led to the defeat of the Republican Gas Ring (whereof more in a later chapter). This method has the advantage of saving expense, because the bolters can use the existing machinery of the opposite party, which organizes the meetings, circulates the literature, prints and distributes the ballots. It is on the whole the most promising strategy, but needs tact as well as vigour on the part of the Independent leaders. Nor will the opposite party always accept the proferred help. Sometimes it fears the gifts of the Greeks, sometimes it hopes to win unhelped, and therefore will not sacrifice any of its candidates to the scruples of the reformers. Sometimes its chiefs dislike the idea of reform so heartily as to prefer defeat at the hands of a Ring of the other party to a victory which might weaken the hold of professionals upon the Machine and lead to a general purification of politics.

If the opposite party refuses the overtures of the reformers who are "kicking" against their own Machine,

or will not purify the ticket sufficiently to satisfy them, there remains the chance of forming a third party out of the best men of both the regular organizations, and starting a third set of candidates. This is an extension and improvement of the first of the four enumerated methods, and has the greater promise of success because it draws votes from both parties instead of from one only. It has been frequently employed of late years in cities, generally of the second order, by running what is called a "Citizens' Ticket."

Of course bolters who desert their own party at a city election do not intend permanently to separate themselves from it. Probably they will vote its ticket at the next State or presidential election. Their object is to shake the power of their local boss, and if they cannot overthrow the Ring, at least to frighten it into better behaviour. This they often effect. After the defeat of some notorious candidates, the jobs are apt to be less flagrant. But such repentances are like those of the sick wolf in the fable, and experience proves that when the public vigilance has been relaxed, the ringsters of both parties return to their wallowing in the mire.

The difficulties of getting good citizens to maintain a steady war against the professionals have been found so great, and in particular the attempt to break their control of the primaries has so often failed, that remedies have been sought in legislation. Several States have extended the penalties attached to bribery and frauds at public elections to similar offences committed at primaries and nominating conventions, deeming these acts to be, as in fact they are, scarcely less hurtful to the community when practised at purely voluntary and private gatherings than when employed at elec-

tions.[1] Statutes have also been passed in some States for regulating the proceedings at primaries. For instance, Ohio provides that a certain notice shall be published of the holding of a primary; that judges, clerks, and supervisors of the election of delegates shall be sworn; that any qualified elector may challenge any one claiming to vote; that the asking, or giving, or taking a bribe, or an attempt to intimidate, shall be punishable offences, and disqualify the offending party from voting. Similar provisions protect the delegate to a convention from the candidate, the candidate from the delegate, and the party from both. Minnesota has just enacted a set of even more stringent regulations, making the annulment or destruction of any ballots cast at a party meeting held for the purpose of choosing either candidates or delegates, or the wrongfully preventing persons from voting who are entitled to vote, or personation, or "any other fraud or wrong tending to defeat or affect the result of the election," a misdemeanour punishable by a fine not exceeding $3000 (£600), or three years' imprisonment, or both penalties combined.[2] Astonishing as it seems to a European that legislation should not only recognize parties, but should actually attempt to regulate the internal proceedings of a political party at a perfectly voluntary gathering of its own members, a gathering whose resolutions no one is bound to obey or regard in any way, some of the wisest American publicists conceive

[1] Says Mr. Bernheim: "The party elections in New York [*i.e.* choice of candidates] are all now representative and conducted with an equal disregard of law and honesty. . . . On the purity of primary elections depend good nominations; and quite as truly the efficiency of public officials; for the party label in almost every case commends the candidate to the electors, his trade-mark is voted for and not his character."—*Political Science Quarterly* for March 1888.

[2] Statutes of Minnesota of 1887, chap. iv. §§ 99-105. It is significant that these sections apply only to cities of 5000 inhabitants or upwards.

that this plan offers the best chance of reforming the Machine and securing the freedom of the voter.[1] Not much success has been hitherto attained; but the statutes have, in some cases (*e.g.* California), been expressed to apply only where the political party seeks to apply them, and the experiment has not been tried long enough to enable a judgment on it to be formed. That it should be tried at all is a phenomenon to be seriously pondered by those who are accustomed to point to America as the country where the principle of leaving things alone has worked most widely and usefully; and it is the strongest evidence of the immense vigour of these party organizations, and of the authority their nominations exert, that reformers, foiled in the effort to purify them by voluntary action, should be driven to invoke the arm of the law.

The struggle between the professional politicians and the reformers has been going on in the great cities, with varying fortune, for the last twenty years. As illustrations of the incidents that mark it will be found in subsequent chapters, I will here say only that in the onslaughts on the Rings, which most elections bring round, the reformers, though they seldom capture the citadel, often destroy some of the outworks, and frighten the garrison into a more cautious and moderate use of their power. After an election in which an "Independent ticket" has received considerable support, the bosses are disposed to make better nominations, and, as an eminent New York professional (the late Mr. Fernando Wood) said, "to pander a little to the moral sense of the community." Every campaign teaches the reformers where the

[1] "A Pennsylvania lawyer tells me, 'I have just closed a protracted trial of an election fraud case under our primary laws with a conviction of the entire board of election officers.'"—Bernheim, *ut supra*.

enemy's weak points lie, and gives them more of that technical skill which has hitherto been the strength of the professionals. It is a warfare of volunteers against disciplined troops, but the volunteers, since they are fighting for the tax-payers at large, would secure so great a preponderance of numbers, if they could but move the whole body of respectable citizens, that their triumph will evidently depend in the long run upon their own constancy and earnestness. If their zeal does not flag; if they do not suffer themselves to be disheartened by frequent repulses; if, not relying too absolutely on any one remedy, they attack the enemy at every point, using every social and educational as well as legal appliance, the example of their disinterested public spirit, as well as the cogency of their arguments, cannot fail to tell on the voters; and no Boss, however adroit, no Ring, however strongly entrenched, will be able to withstand them. The war, however, will not be over when the enemy has been routed. Although much may be done by legislative remedies, such as new election laws, new provisions against corruption, a reconstruction of the frame of city government, and a purification of the civil service, there are certain internal and, so to speak, natural causes of mischief, the removal of which will need patience and unremitting diligence. In great cities—for it is throughout chiefly of cities that we have to think—a large section of the voters will, for many years to come, be comparatively ignorant of the methods of free government which they are set to work. They will be ignorant even of their own interests, failing to perceive that wasteful expenditure injures those who do not pay direct taxes, as well as those who do. Retaining some of the feelings which their European

experience has tended to produce, they will distrust appeals coming from the more cultivated classes, and be inclined to listen to loose-tongued demagogues. Once they have joined a party they will vote at the bidding of its local leaders, however personally unworthy.[1] While this section remains numerous, Rings and Bosses will always have materials ready to their hands. There is, however, reason to expect that with the progress of time this section will become relatively smaller. And even now, large as it is, it could be overthrown and bossdom extirpated, were the better citizens to maintain unbroken through a series of elections that unity and vigour of action of which they have at rare moments, and under the impulse of urgent duty, shown themselves capable. In America, as everywhere else in the world, the commonwealth suffers more often from apathy or shortsightedness in the upper classes, who ought to lead, than from ignorance or recklessness in the humbler classes, who are generally ready to follow when they are wisely and patriotically led.

[1] Says Mr. Roosevelt: "Voters of the labouring class in the cities are very emotional: they value in a public man what we are accustomed to consider virtues only to be taken into account when estimating private character. Thus if a man is open-handed and warm-hearted, they consider it as being a fair offset to his being a little bit shaky when it comes to applying the eighth commandment to affairs of state. I have more than once heard the statement 'He is very liberal to the poor,' advanced as a perfectly satisfactory answer to the charge that a certain public man was corrupt." He adds, "In the lower wards (of New York City), where there is a large vicious population, the condition of politics is often fairly appalling, and the [local] boss is generally a man of grossly immoral public and private character. In these wards many of the social organizations with which the leaders are obliged to keep on good terms are composed of criminals or of the relatives and associates of criminals. . . . The president of a powerful semi-political association was by profession a burglar, the man who received the goods he stole was an alderman. Another alderman was elected while his hair was still short from a term in the State prison. A school trustee had been convicted of embezzlement and was the associate of criminals."—*Century* magazine for Nov. 1886.

CHAPTER LXIX

NOMINATING CONVENTIONS

In every American election there are two acts of choice, two periods of contest. The first is the selection of the candidate from within the party by the party; the other is the struggle between the parties for the place. Frequently the former of these is more important, more keenly fought over, than the latter, for there are many districts in which the predominance of one party is so marked that its candidate is sure of success, and therefore the choice of a candidate is virtually the choice of the officer or representative.

Preceding chapters have described the machinery which exists for choosing and nominating a candidate. The process is similar in every State of the Union, and through all elections to office, from the lowest to the highest, from that of common councilman for a city ward up to that of President of the United States. But, of course, the higher the office, and the larger the area over which the election extends, the greater are the efforts made to secure the nomination, and the hotter the passions it excites.

Like most political institutions, the system of nominating the President by a popular convention is the result of a long process of evolution.

In the first two elections, those of 1789[1] and 1792, there was no need for nominations of candidates, because the whole nation wished and expected George Washington to be elected. So too, when in 1796 Washington declared his retirement, the dominant feeling of one party was for John Adams, that of the other for Thomas Jefferson, and nobody thought of setting out formally what was so generally understood.

In 1800, however, the year of the fourth election, there was somewhat less unanimity. The prevailing sentiment of the Federalists went for re-electing Adams, and the small conclave of Federalist members of Congress which met to promote his interest was deemed scarcely necessary. The Republicans, however (for that was the name then borne by the party which now calls itself Democratic), while united in desiring to make Jefferson President, hesitated as to their candidate for the vice-presidency, and a meeting of Republican members of Congress was therefore called to recommend Aaron Burr for this office. It was a small meeting and a secret meeting, but it is memorable not only as the first congressional caucus but as the first attempt to arrange in any way a party nomination.

In 1804 a more regular gathering for the same purpose was held. All the Republican members of Congress were summoned to meet; and they unanimously nominated Jefferson for President, and George Clinton of New York for Vice-President. So in 1808 nearly all the Republican majority in both Houses of Congress met and formally nominated Madison and

[1] The President is now always chosen on the Tuesday after the first Monday in the November of an even year, whose number is a multiple of four (*e.g.* 1880, 1884, 1888), and comes into office in the spring following; but the first election was held in the beginning of 1789, because the Constitution had been then only just adopted.

Clinton. The same course was followed in 1812, and again in 1816. But the objections which were from the first made to this action of the party in Congress, as being an arrogant usurpation of the rights of the people—for no one dreamed of leaving freedom to the presidential electors—gained rather than lost strength on each successive occasion, so much so that in 1820 the few who met made no nomination,[1] and in 1824, out of the Democratic members of both Houses of Congress summoned to the "nominating caucus," as it was called, only sixty-six attended, many of the remainder having announced their disapproval of the practice.[2] The nominee of this caucus came in only third at the polls, and this failure gave the *coup de grâce* to a plan which the levelling tendencies of the time, and the disposition to refer everything to the arbitrament of the masses, would in any case have soon extinguished. No congressional caucus was ever again held for the choice of candidates.

A new method, however, was not at once discovered. In 1828 Jackson was recommended as candidate by the legislature of Tennessee and by a number of popular gatherings in different places, while his opponents accepted, without any formal nomination, the then President, J. Q. Adams, as their candidate. In 1831 however, and again in 1832, assemblies were held by two great parties (the Anti-Masons and the National Republicans, afterwards called Whigs) consisting of delegates from most of the States; and each of these conventions nominated its candidates for the presidency and vice-presidency. A third "national convention" of young men, which met later in 1832, adopted the

[1] It was not absolutely necessary to have a nomination, because there was a general feeling in favour of re-electing Monroe.

[2] The whole number was then 261, nearly all Democrats, for the Federalist party had been for some time virtually extinct.

Whig nominations, and added to them a series of ten resolutions, constituting the first political platform ever put forth by a nominating body. The friends of Jackson followed suit by holding their convention which nominated him and Van Buren. For the election of 1836, a similar convention was held by the Jacksonian Democrats, none by their opponents. But for that of 1840, national conventions of delegates from nearly all the States were held by both Democrats and Whigs, as well as by the (then young and very small) party of the Abolitionists. This precedent has been followed in every subsequent contest, so that the national nominating conventions of the great parties are now as much a part of the regular machinery of politics as the election rules contained in the Constitution itself. The establishment of the system coincides with and represents the complete social democratization of politics in Jackson's time. It suits both the professionals, for whom it finds occupation and whose power it secures, and the ordinary citizen who, not having time himself to attend to politics, likes to think that his right of selecting candidates is duly recognized in the selection of candidates by delegates whom he is entitled to vote for. But it was soon seen to be liable to fall under the control of selfish intriguers and to destroy the chances of able and independent men, and was denounced as early as 1844 by Calhoun, who then refused to allow his name to be submitted to a nominating convention. He observed that he would never have joined in breaking down the old congressional caucus had he foreseen that its successor would prove so much more pernicious.

Thus from 1789 till 1800 there were no formal nominations; from 1800 till 1824, nominations were made by congressional caucuses; from 1824 till 1840,

nominations irregularly made by State legislatures and popular meetings were gradually ripening towards the method of a special gathering of delegates from the whole country. This last plan has held its ground from 1840 till the present day, and is so exactly conformable to the political habits of the people that it is not likely soon to disappear.[1]

Its perfection, however, was not reached at once. The early conventions were to a large extent mass meetings.[2] The later and present ones are regularly-constituted representative bodies, composed exclusively of delegates, each of whom has been duly elected at a party meeting in his own State, and brings with him his credentials. It would be tedious to trace the process whereby the present system was created, so I shall be content with describing it in outline as it now stands.

The Constitution provides that each State shall choose as many presidential electors as it has persons representing it in Congress, *i.e.* two electors to correspond to the two senators from each State, and as many more as the State sends members to the House of Representatives. Thus Delaware and Oregon have each three electoral votes, because they have each only one representative besides their two senators. New York has thirty-six electoral votes: two corresponding to its two senators, thirty-four corresponding to its thirty-four representatives in the House.

Now in the nominating convention each State is

[1] An interesting sketch of the history of congressional caucuses and presidential conventions is given by Mr. M. Ostrogorski in two articles in the *Annales de l'École Libre des Sciences Politiques*, January and April 1888.

[2] In 1856 the first Republican convention, which nominated Fremont, was rather a mass meeting than a representative body. So was the seceding Republican convention which met at Cincinnati in 1872 and nominated Greeley.

allowed twice as many delegates as it has electoral votes, *e.g.* Delaware and Oregon have each six delegates, New York has seventy-two. The delegates are chosen by local conventions in their several States, viz. two for each congressional district by the party convention of that district, and four for the whole State (called delegates-at-large) by the State convention. As each convention is composed of delegates from primaries, it is the composition of the primaries which determines that of the local conventions, and the composition of the local conventions which determines that of the national. To every delegate there is added a person called his "alternate," chosen by the local convention at the same time, and empowered to replace him in case he cannot be present in the national convention. If the delegate is present to vote the alternate is silent; if from any cause the delegate is absent, the alternate steps into his shoes.

Respecting the freedom of the delegate to vote for whom he will, there have been differences both of doctrine and of practice. A local convention or State convention may instruct its delegates which aspirant[1] shall be their first choice, or even in case he cannot be carried, for whom their subsequent votes shall be cast. Such instructions are frequently given, and still more frequently implied, because a delegate is often chosen expressly as being the supporter of one or other of the aspirants whose names are most prominent. But the delegate is not absolutely bound to follow his instructions. He may vote even on the first ballot for some other aspirant than the one desired by his own local or State convention. Much more, of course, may he,

[1] I use throughout the term "aspirant" to denote a competitor for the nomination, reserving the term "candidate" for the person nominated as the party's choice for the presidency.

though not so instructed, change his vote when it is plain that that aspirant will not succeed. His vote is always a valid one, even when given in the teeth of his instructions; but how far he will be held censurable for breaking them depends on a variety of circumstances. His motives may be corrupt; perhaps something has been given him. They may be pardonable; a party chief may have put pressure on him, or he may desire to be on the safe side, and go with the majority. They may be laudable; he really seeks to do the best for the party, or has been convinced by facts lately brought to his knowledge that the man for whom he is instructed is unworthy. Where motives are doubtful, it may be charitable, but it is not safe, to assume that they are of the higher order. Each "State delegation" has its chairman, and is expected to keep together during the convention. It usually travels together to the place of meeting; takes rooms in the same hotel; has a recognized headquarters there; sits in a particular place allotted to it in the convention hall; holds meetings of its members during the progress of the convention to decide on the course which it shall from time to time take. These meetings, if the State be a large and doubtful one, excite great interest, and the sharp-eared reporter prowls round them, eager to learn how the votes will go. Each State delegation votes by its chairman, who announces how his delegates vote; but if his report is challenged the roll of delegates is called, and they vote individually. Whether the votes of a State delegation shall be given solid for the aspirant whom the majority of the delegation favours, or by the delegates individually according to their preferences, is a point which has excited bitter controversy. The present practice of the Republican party (so settled in 1876 and again in 1880) allows

the delegates to vote individually, even when they have been instructed by a State convention to cast a solid vote. The Democratic party, on the other hand, sustains any such instruction given to the delegation, and records the vote of all the State delegates for the aspirant whom the majority among them approve.[1] This is the so-called Unit Rule. If, however, the State convention has not imposed the unit rule, the delegates vote individually.

For the sake of keeping up party life in the Territories and in the Federal District of Columbia, delegates from them are admitted to the national convention, although the Territories and District have no votes in a presidential election. Delegations of States which are known to be in the hands of the opposite party, and whose preference of one aspirant to another will not really tell upon the result of the presidential election, are admitted to vote equally with the delegations of the States sure to go for the party which holds the convention. This arrangement is justified on the ground that it sustains the interest and energy of the party in States where it is in a minority. But it permits the choice to be determined by districts whose own action will not tell in any way on the election itself, and the delegates from these districts are apt to belong to a lower class of politicians than those from the States where the party holds a majority, and to be swayed by more sordid motives.[2]

So much for the composition of the national convention: we may now go on to describe its proceedings.

[1] An attempt was made at the Democratic convention in Chicago in July 1884 to overset this rule, but the majority re-affirmed it.

[2] Although the large majority of the delegates in the Conventions of the two great parties belong to the class of professional politicians, there is always a respectable minority of men who do not belong to that class, but have obtained the post owing to their interest in seeing a strong and honest candidate chosen. The great importance of the business draw- men of talent and experience from most parts of the country.

It is held in the summer immediately preceding a presidential election, usually in June or July, the election falling in November. A large city is always chosen, in order to obtain adequate hotel accommodation, and easy railroad access. Formerly, conventions were commonly held in Baltimore or Philadelphia, but since the centre of population has shifted to the Mississippi valley, Cincinnati, St. Louis, and especially Chicago, have become the favourite spots.

Business begins by the "calling of the convention to order" by the chairman of the National Party committee. Then a temporary chairman is nominated, and, if opposed, voted on; the vote sometimes giving an indication of the respective strength of the factions present. Then the secretaries and the clerks are appointed, and the rules which are to govern the business are adopted. After this, the committees, particularly those on credentials and resolutions, are nominated, and the convention adjourns till their report can be presented.

The next sitting usually opens, after the customary prayer, with the appointment of the permanent chairman, who inaugurates the proceedings with a speech. Then the report of the committee on resolutions (if completed) is presented. It contains what is called the platform, a long series of resolutions embodying the principles and programme of the party, which has usually been so drawn as to conciliate every section, and avoid or treat with prudent ambiguity those questions on which opinion within the party is divided. Any delegate who objects to a resolution can move to strike it out or amend it; but it is generally sustained in the shape it has received from the practised hands of the committee.

Next follows the nomination of aspirants for the post of party candidate. The roll of States is called, and

when a State is reached to which an aspirant intended to be nominated belongs, a prominent delegate from that State mounts the platform, and proposes him in a speech extolling his merits, and sometimes indirectly disparaging the other aspirants. Another delegate seconds the nomination, sometimes a third follows; and then the roll-call goes on till all the States have been despatched, and all the aspirants nominated.[1] The average number of nominations is seven or eight; it rarely exceeds twelve.[2]

Thus the final stage is reached, for which all else has been but preparation—that of balloting between the aspirants. The clerks call the roll of States from Alabama to Wisconsin, and as each is called the chairman of its delegation announces the votes, *e.g.* six for A, five for B, three for C, unless, of course, under the unit rule, the whole vote is cast for that one aspirant whom the majority of the delegation supports. When all have voted, the totals are made up and announced. If one competitor has an absolute majority of the whole number voting, according to the Republican rule, a majority of two-thirds of the number voting, according to the Democratic rule, he has been duly chosen, and nothing remains but formally to make his nomination unanimous. If, however, as has usually happened of late years, no one obtains the requisite majority, the roll is called again, in order that individual delegates and delegations (if the unit rule prevails) may have the opportunity of changing their votes; and the process is repeated until some one of the aspirants put forward has received the required number of votes. Sometimes many

[1] Nominations may however be made at any subsequent time.

[2] However, in the Republican Convention of 1888, fourteen aspirants were nominated at the outset, six of whom were voted for on the last ballot. Votes were given at one or other of the ballotings for nineteen aspirants in all.

oll-calls take place. In 1852 the Democrats nominated Franklin Pierce on the forty-ninth ballot, and the Whigs General Scott on the fifty-third. In 1880, hirty-six ballots were taken before General Garfield vas nominated. But, in 1835, Martin Van Buren; n 1844, Henry Clay; in 1868 and 1872, Ulysses S. Grant, were unanimously nominated, the two former by ıcclamation, the latter on the first ballot. In 1884 Mr. Blaine was nominated by the Republicans on the fourth ballot, Mr. Cleveland by the Democrats on the second.[1] Thus it sometimes happens that the voting is over in an hour or two, while at other times it may last for days.

When a candidate for the presidency has been thus found, the convention proceeds to similarly determine its candidate for the vice-presidency. The inferiority of the office, and the exhaustion which has by this time overcome the delegates, make the second struggle a less exciting and protracted one. Frequently one of the defeated aspirants is consoled by this minor nomination, especially if he has retired at the nick of time in favour of the rival who has been chosen. The work of the convention is then complete, and votes of thanks to the chairman and other officials conclude the proceedings. The two nominees are now the party candidates, entitled to the support of the party organizations and of loyal party men over the length and breadth of the Union.

Entitled to that support, but not necessarily sure to receive it. Even in America, party discipline cannot compel an individual voter to cast his ballot for the party nominee. All that the convention can do is to recommend the candidate to the party; all that opinion can do is to brand as a Kicker or Bolter whoever breaks

[1] In 1888 Mr. Cleveland was nominated by the Democrats by acclamation, Mr. Harrison by the Republicans on the eighth ballot.

away; all that the local party organization can do is to strike the bolter off its lists. But how stands it, the reader will ask, with the delegates who have been present in the convention, have had their chance of carrying their man, and have been beaten? are they not held absolutely bound to support the candidate chosen?

This is a question which has excited much controversy. The impulse and effort of the successful majority has always been to impose such an obligation on the defeated minority, and the chief motive which has prevented it from being always formally enforced by a rule or resolution of the convention has been the fear that it might precipitate hostilities, might induce men of independent character, or strongly opposed to some particular aspirant, to refuse to attend as delegates, or to secede early in the proceedings when they saw that a person whom they disapproved was likely to win.

At the Republican national convention at Chicago in June 1880 an attempt was successfully made to impose the obligation by the following resolution, commonly called the "Iron clad Pledge":—

"That every member of this convention is bound in honour to support its nominee, whoever that nominee may be, and that no man should hold his seat here who is not ready so to agree."

This was carried by 716 votes to 3. But at the Republican national convention at Chicago in June 1884, when a similar resolution was presented, the opposition developed was strong enough to compel its withdrawal; and in point of fact, several conspicuous delegates at that convention strenuously opposed its nominee at the subsequent presidential election, themselves voting, and inducing others to vote, for the candidate of the Democratic party.

CHAPTER LXX

THE NOMINATING CONVENTION AT WORK

We have examined the composition of a national convention and the normal order of business in it. The more difficult task remains of describing the actual character and features of such an assembly, the motives which sway it, the temper it displays, the passions it elicits, the wiles by which its members are lured or driven to their goal.

A national convention has two objects, the formal declaration of the principles, views, and practical proposals of the party, and the choice of its candidates for the executive headship of the nation.

Of these objects the former has in critical times, such as the two elections preceding the Civil War, been of great importance. In the Democratic Convention at Charleston in 1860, a debate on resolutions led to a secession, and to the break-up of the Democratic party.[1] But of late years the adoption of platforms, drafted in a somewhat vague and pompous style by the committee, has been almost a matter of form. Some observations on these enunciations of doctrine will be found in another chapter.[2]

[1] The national conventions of those days were much smaller than now, nor were the assisting spectators so numerous.

[2] The nearest English parallel to an American "platform" is to be

The second object is of absorbing interest and importance, because the presidency is the great prize of politics, the goal of every statesman's ambition. The President can by his veto stop legislation adverse to the wishes of the party he represents. The President is the universal dispenser of patronage.[1]

One may therefore say that the task of a convention is to choose the party candidate. And it is a task difficult enough to tax all the resources of the host of delegates and their leaders. Who is the man fittest to be adopted as candidate? Not even a novice in politics will suppose that it is the best man, *i.e.* the wisest, strongest, and most upright. Plainly, it is the man most likely to win, the man who, to use the technical term, is most "available." What a party wants is not a good President but a good candidate. The party managers have therefore to look out for the person likely to gain most support, and at the same time excite least opposition. Their search is rendered more troublesome by the fact that many of them, being themselves either aspirants or the close allies of aspirants, are not disinterested, and are distrusted by their fellow-searchers.

Many things have to be considered. The ability of a statesman, the length of time he has been before the people, his oratorical gifts, his "magnetism" (personal attractiveness), his family connections, his face and figure, the purity of his private life, his "record" (the chronicle of his conduct) as regards integrity—all these are matters needing to be weighed. To have served

found in the addresses to their respective constituencies issued at a general election by the Prime Minister, if a member of the House of Commons, and the leader of the Opposition in that House. Such addresses, however, do not formally bind the whole party, as an American platform does.

[1] Subject at present, as respects some offices, to the provisions of the Civil Service Reform Act of 1883.

with distinction in the Federal ranks during the War of Secession, endears a man to the still numerous veterans of the Northern armies, and does not damage him in the South. Account must be taken of the personal jealousies and hatreds which a man has excited. To have incurred the enmity of a leading statesman, of a powerful boss or ring, or of an influential newspaper, is serious. Several such feuds may be fatal.

Finally, much depends on the State whence a possible candidate comes. Local feeling leads a State to support one of its own citizens; it increases the vote of his own party in that State, and reduces the vote of the opposite party. Where the State is decidedly of one political colour, *e.g.* so steadily Republican as Vermont, so steadily Democratic as Maryland, this consideration is weak, for the choice of a Democratic candidate from the former, or of a Republican candidate from the latter, would not make the difference of the State's vote. It is therefore from a doubtful State that a candidate may with most advantage be selected; and the larger the doubtful State the better. California, with her five electoral votes, is just worth "placating"; Indiana, with her fifteen votes, more so; New York, with her thirty-six votes, most so of all. Hence an aspirant who belongs to a great and doubtful State is *prima facie* the most eligible candidate. The force of this consideration is shown by the fact that during the last thirty years nearly all leading aspirants have come from great States, though some of the most eminent statesmen have been citizens of small ones such as Vermont and Delaware.

Aspirants hoping to obtain the party nomination from a national convention may be divided into three

classes, the two last of which, as will appear presently, are not mutually exclusive, viz.—

Favourites. Dark Horses. Favourite Sons.

A Favourite is always a politician well known over the Union, and drawing support from all or most of its sections. He is a man who has distinguished himself in Congress, or in the war, or in the politics of some State so large that its politics are matter of knowledge and interest to the whole nation. He is usually a person of conspicuous gifts, whether as a speaker, or a party manager, or an administrator. The drawback to him is that in making friends he has also made enemies.

A Dark Horse is a person not very widely known in the country at large, but known rather for good than for evil. He has probably sat in Congress, been useful on committees, and gained some credit among those who dealt with him in Washington. Or he has approved himself a safe and assiduous party man in the political campaigns of his own and neighbouring States, yet without reaching national prominence. Sometimes he is a really able man, but without the special talents that win popularity. Still, speaking generally, the note of the Dark Horse is respectability, verging on colourlessness; and he is therefore a good sort of person to fall back upon when able but dangerous Favourites have proved impossible. That native mediocrity rather than adverse fortune has prevented him from winning fame is proved by the fact that the Dark Horses who have reached the White House, if they have seldom turned out bad presidents, have even more seldom turned out distinguished ones.

A Favourite Son is a politician respected or admired in his own State, but little regarded beyond it. He may

not be, like the Dark Horse, little known to the nation at large, but he has not fixed its eye or filled its ear. He is usually a man who has sat in the State legislature; filled with credit the post of State governor; perhaps gone as senator or representative to Washington, and there approved himself an active promoter of local interests. Probably he possesses the qualities which gain local popularity—geniality, activity, sympathy with the dominant sentiment and habits of his State; or while endowed with gifts excellent in their way, he has lacked the audacity and tenacity which push a man to the front through a jostling crowd. More rarely he is a demagogue who has raised himself by flattering the masses of his State on some local questions, or a skilful handler of party organizations who has made local bosses and spoilsmen believe that their interests are safe in his hands. Anyhow, his personality is such as to be more effective with neighbours than with the nation, as a lamp whose glow fills the side chapel of a cathedral sinks to a spark of light when carried into the nave.

A Favourite Son may be also a Dark Horse; that is to say, he may be well known in his own State, but so little known out of it as to be an unlikely candidate. But he need not be. The types are different, for as there are Favourite Sons whom the nation knows but does not care for, so there are Dark Horses whose reputation, such as it is, has not been made in State affairs, and who rely very little on State favour.

There are seldom more than two, never more than three Favourites in the running at the same convention. Favourite Sons are more numerous—it is not uncommon to have four or five, or even six, though perhaps not all these are actually started in the race. The number of Dark Horses is practically unlimited, because many

talked of beforehand are not actually started, while others not considered before the convention begins are discovered as it goes on. This happened in the leading and most instructive case of James A. Garfield, who was not voted for at all on the first ballot in the Republican Convention of 1880, and had, on no ballot up to the thirty-fourth, received more than two votes. On the thirty-sixth[1] he was nominated by 399. So, in 1868, Horatio Seymour, who had been so little thought of as a candidate that he was chairman of the Democratic Convention, was first voted for on the twenty-second ballot. He refused to be nominated, but was induced to leave the chair and nominated on that very ballot.

To carry the analysis farther, it may be observed that four sets of motives are at work upon those who direct or vote in a convention, acting with different degrees of force on different persons. There is the wish to carry a particular aspirant. There is the wish to defeat a particular aspirant, a wish sometimes stronger than any predilection. There is the desire to get something for one's self out of the struggle—*e.g.* by trading one's vote or influence for the prospect of a Federal office. There is the wish to find the man who, be he good or bad, friend or foe, will give the party its best chance of victory. These motives cross one another, get mixed, vary in relative strength from hour to hour as the convention goes on and new possibilities are disclosed. To forecast their joint effect on the minds of particular persons and sections of a party needs wide knowledge and eminent acuteness, to play upon them is a matter of the finest skill.

The proceedings of a nominating convention can be

[1] In 1860 the Democratic Convention at Charleston nominated Mr. Douglas on the fifty-seventh ballot.

best understood by regarding the three periods into which they fall: the transactions which precede the opening of its sittings; the preliminary business of passing rules and resolutions and delivering the nominating speeches; and, finally, the balloting.

A President has scarcely been elected before the newspapers begin to discuss his probable successor. Little, however, is done towards the ascertainment of candidates till about a year before the next election, when the factions of the chief aspirants prepare to fall into line, newspapers take up their parable in favour of one or other, and bosses begin the work of "subsoiling," *i.e.* manipulating primaries and local conventions so as to secure the choice of such delegates to the next national convention as they desire. In most of the conventions which appoint delegates, the claims of the several aspirants are canvassed, and the delegates chosen are usually chosen in the interest of one particular aspirant. The newspapers, with their quick sense of what is beginning to stir men's thoughts, redouble their advocacy, and the "boom" of one or two of the probable favourites is thus fairly started. Before the delegates leave their homes for the national convention, most of them have fixed on their candidate, many having indeed received positive instructions as to how their vote shall be cast. All appears to be spontaneous, but in reality both the choice of particular men as delegates, and the instructions given, are usually the result of untiring underground work among local politicians, directed, or even personally conducted, by two or three skilful agents and emissaries of a leading aspirant, or of the knot which seeks to run him.

Four or five days before the day fixed for the opening of the convention the delegations begin to flock into the

city where it is to be held. Some come attended by a host of friends and camp-followers, and are received at the depôt (railway terminus) by the politicians of the city, with a band of music and an admiring crowd. Thus Tammany Hall, the famous Democratic club of New York City, came six hundred strong to Chicago in July 1884, filling two special trains.[1] A great crowd met it at the station, and it marched, following its Boss, from the cars to its headquarters at the Palmer House in procession, each member wearing his badge, just as the retainers of Earl Warwick the King-maker used to follow him through the streets of London with the Bear and Ragged Staff upon their sleeves. Less than twenty of the six hundred were delegates; the rest ordinary members of the organization, who had accompanied to give it moral and vocal support.[2]

Before the great day dawns many thousands of politicians, newspaper men, and sight-seers have filled to overflowing every hotel in the city, and crowded the main thoroughfares so that the horse-cars can scarcely penetrate the throng. It is like a mediæval pilgrimage, or the mustering of a great army. When the chief delegations have arrived the work begins in earnest. Not only each large delegation, but the faction of each leading aspirant to the candidacy, has its headquarters, where the managers hold perpetual session, reckoning up their numbers, starting rumours meant to exaggerate their resources, and dishearten their opponents, organizing raids upon the less experienced delegates as they arrive. Some fill the entrance halls and bars of the hotels, talk

[1] The Boss of Tammany was an object of special curiosity to the crowd, being the most illustrious professional in the whole United States.

[2] The two other Democratic organizations of New York City, the County Democracy and Irving Hall, came each in force—the one a regiment of five hundred, the other of two hundred.

to the busy reporters, extemporize meetings with tumultuous cheering for their favourite. The common "worker" is good enough to raise the boom by these devices. Meanwhile, the more skilful leaders begin (as it is expressed) to "plough around" among the delegations of the newer Western and Southern States, usually (at least among the Republicans) more malleable, because they come from regions where the strength of the factions supporting the various aspirants is less accurately known, and are themselves more easily "captured" by bold assertions or seductive promises. Sometimes an expert intriguer will "break into" one of these wavering delegations, and make havoc like a fox in a hen-roost. "Missionaries" are sent out to bring over individuals; embassies are accredited from one delegation to another to endeavour to arrange combinations by coaxing the weaker party to drop its own aspirant, and add its votes to those of the stronger party. All is conducted with perfect order and good-humour, for the least approach to violence would recoil upon its authors; and the only breach of courtesy is where a delegation refuses to receive the ambassadors of an organization whose evil fame has made it odious.[1]

It is against etiquette for the aspirants themselves to appear upon the scene,[2] whether from some lingering respect for the notion that a man must not ask the people to choose him, but accept the proffered honour, or on the principle that the attorney who conducts his own case has a fool for a client. But from Washington, if he is

[1] This happened once or twice in July 1884; Tammany Hall being regarded with some suspicion by the better sort of Democrats.

[2] Oddly enough, the only English parallel to this delicate reserve is to be found in the custom which forbids a candidate for the representation in Parliament of the University of Oxford to approach the University before or during the election.

an official or a senator, or perhaps from his own home in some distant State, each aspirant keeps up hourly communication with his managers in the convention city, having probably a private wire laid on for the purpose. Not only may officials, including the President himself, become aspirants, but Federal office-holders may be, and very largely are, delegates, especially among the Southern Republicans when that party is in power. They have the strongest personal interest in the issue; and the heads of departments can, by promises of places, exert a potent influence. One hears in America, just as one used to hear in France under Louis Napoleon or Marshal MacMahon, of the "candidate of the Administration."[1]

As the hour when the convention is to open approaches, each faction strains its energy to the utmost. The larger delegations hold meetings to determine their course in the event of the man they chiefly favour proving "unavailable." Conferences take place between different delegations. Lists are published in the newspapers of the strength of each aspirant. Sea and land are compassed to gain one influential delegate, who "owns" other delegates. If he resists other persuasions, he is "switched on" to the private wire of some magnate at Washington, who "talks to him," and suggests inducements more effective than those he has hitherto withstood. The air is thick with tales of plots and treasons, so that no politician trusts his neighbour, for rumour spares none.

At length the period of expectation and preparation is over, and the summer sun rises upon the fateful day to which every politician in the party

[1] In 1884, President Arthur and his ministers at Washington sat up during the long night session of the Republican Convention receiving an incessant stream of telegraphic reports of the proceedings at Chicago.

has looked forward for three years. Long before the time (usually 11 A.M.) fixed for the beginning of business, every part of the hall, erected specially for the gathering—a hall often large enough to hold from ten to fifteen thousand persons—is crowded.[1] The delegates—who in 1884 were 820 in number—are a mere drop in the ocean of faces. Eminent politicians from every State of the Union, senators and representatives from Washington not a few, journalists and reporters, ladies, sight-seers from distant cities, as well as a swarm of partisans from the city itself, press in; some semblance of order being kept by the sergeant-at-arms and his marshals. Some wear devices, sometimes the badge of their State, or of their organization; sometimes the colours or emblem of their favourite aspirant.[2] Each State delegation has its allotted place marked by the flag of the State floating from a pole; but leaders may be seen passing from one group to another, while the spectators listen to the band playing popular airs, and cheer any well-known figure that enters.

When the assembly is "called to order," a prayer is offered—each day's sitting begins with a prayer by some clergyman of local eminence,[3] the susceptibilities of various denominations being duly respected in the selection—and business proceeds according to the order described in last chapter. First come the preliminaries, appointment of committees and chairman, then the plat-

[1] Admission is of course by ticket, and the prices given for tickets to those who, having obtained them, sell them, run high, up to $30, or even $50.

[2] In the Democratic Convention of 1884 the admirers of a certain senatorial aspirant proclaimed themselves by red bandana handkerchiefs, that article of dress being a favourite with the senator in question.

[3] It was remarked at the Democratic Convention of 1884 that the delegates from the South all rose and stood during the prayer, while those from the Northern States did not.

form, and probably on the second day, but perhaps later, the nominations and balloting, the latter sometimes extending over several days. There is usually both a forenoon and an afternoon session.

A European is astonished to see eight hundred men prepare to transact the two most difficult pieces of business an assembly can undertake, the solemn consideration of their principles, and the selection of the person they wish to place at the head of the nation, in the sight and hearing of twelve thousand other men and women. Observation of what follows does not lessen the astonishment. The convention presents in sharp contrast and frequent alternation, the two most striking features of Americans in public—their orderliness and their excitability. Everything is done according to strict rule, with a scrupulous observance of small formalities which European meetings would ignore or despise. Points of order almost too fine for a parliament are taken, argued, decided on by the chair, to whom every one bows. Yet the passions that sway the multitude are constantly bursting forth in storms of cheering or hissing at an allusion to a favourite aspirant or an obnoxious name, and five or six speakers often take the floor together, shouting and gesticulating at each other till the chairman obtains a hearing for one of them. Of course it depends on the chairman whether or no the convention sinks into a mob. A chairman with a weak voice, or a want of prompt decision, or a suspicion of partisanship, may bring the assembly to the verge of disaster, and it has more than once happened that when the confusion that prevailed would have led to an irregular vote which might have been subsequently disputed, the action of the manager acting for the winning horse has, by waiving some point of order or

consenting to an adjournment, saved the party from disruption. Even in the noisiest scenes the singular good sense and underlying love of fair-play—fair-play according to the rules of the game, which do not exclude some dodges repugnant to an honourable man—will often reassert itself, and pull back the vehicle from the edge of the precipice.

The chief interest of the earlier proceedings lies in the indications which speeches and votings give of the relative strength of the factions. Sometimes a division on the choice of a chairman, or on the adoption of a rule, reveals the tendencies of the majority, or of influential leaders, in a way which sends the chances of an aspirant swiftly up or down the barometer of opinion. So when the nominating speeches come, it is not so much their eloquence that helps a nominee as the warmth with which the audience receives them, the volume of cheering and the length of time, sometimes fifteen minutes, during which the transport lasts. As might be guessed from the size of the audience which he addresses, an orator is expected to "soar into the blue empyrean" at once. The rhetoric is usually pompous and impassioned. To read a speech, even a short speech, from copious notes, is neither irregular nor rare.

While forenoon and evening, perhaps even late evening, are occupied with the sittings of the convention, canvassing and intrigue go on more briskly than ever during the rest of the day and night. Conferences are held between delegations anxious to arrange for a union of forces on one candidate.[1] Divided delegations hold

[1] In 1884 many efforts were made to arrange combinations against Mr. Blaine, but all failed. The Arthur men are reported to have sent an embassy to the Edmunds men begging them to lend some votes for the first ballot, in order that the total Arthur vote might at first overtop that of Mr. Blaine. The Edmunds men refused, being mostly persons entirely

meetings of their own members, meetings often long and stormy, behind closed doors, outside which a curious crowd listens to the angry voices within, and snatches at the reports which the dispersing members give of the result. Sometimes the whole issue of the convention hinges on the action of the delegates of a great State, which, like New York, under the unit rule, can throw seventy-two votes into the trembling scale.[1] It may even happen, although this is against a well-settled custom, that a brazen candidate himself goes the round of several delegations and tries to harangue them into supporting him.[2]

As it rarely happens that any aspirant is able to command at starting a majority of the whole convention, the object of each is to arrange a combination whereby he may gather from the supporters of other aspirants votes sufficient to make up the requisite majority, be it two-thirds, according to the Democratic rule, or a little more than a half, according to the Republican. Let us take the total number of votes at 820—the figure in 1884. There are usually two aspirants commanding each from 230 to 330; one or two others with from 50 to 100, and the rest with much smaller figures, 10 to 30 each. A combination can succeed in one of two ways: (*a*) One of the stronger aspirants may pick up votes, sometimes quickly, some-

out of sympathy with the Arthur men, though possibly they would have preferred Mr. Arthur to Mr. Blaine.

[1] In the Democratic Convention of 1884 it was well known that the choice of Mr. Cleveland, the leading favourite, would depend on the action of the delegation of New York State, not only, however, because it cast the largest vote, but because it was his own State, and because it was already foreseen that the presidential election would turn on the electoral vote of New York. Thus the struggle in the convention came to be really a duel between Mr. Cleveland and the Boss of Tammany, with whom Mr. Cleveland had at an earlier period in his career "locked horns."

[2] This is reported to have been done by a well-known politician in Chicago in July 1884.

times by slow degrees, from the weaker candidates, sufficient to overpower the rival Favourite; (*b*) Each of the strongest aspirants may hold his forces so well together that after repeated ballotings it becomes clear that neither can win against the resistance of the other. Neither faction will, however, give way, because there is usually bitterness between them, because each would feel humiliated, and because each aspirant has so many friends that his patronage will no more than suffice for the clients to whom he is pledged already. Hence one or other of the baffled Favourites suddenly transfers the votes he commands to some one of the weaker men, who then so rapidly "develops strength" that the rest of the minor factions go over to him, and he obtains the requisite majority.[1] Experience has so well prepared the tacticians for one or other of these issues that the game is always played with a view to them. The first effort of the managers of a Favourite is to capture the minor groups of delegates who support one or other of the Favourite Sons and Dark Horses. Not till this proves hopeless do they decide to sell themselves as dear as they can by taking up and carrying to victory a Dark Horse or perhaps even a Favourite Son, thereby retaining the pleasure of defeating the rival Favourite, while at the same time establishing a claim for themselves and their faction on the aspirant whom they carry.[2]

[1] Suppose A and B, Favourites, to have each 300 votes. After some ballotings, A's friends, perceiving they cannot draw enough of the votes commanded by C, D, and F (who have each 60), and of G and H (who have each 20) to win, give their 300 votes to F. This gives him so considerable a lead that C, D, and G go over to him on the next ballot; he has then 440, and either wins at once (Republican rule) or will win next ballot (Democratic rule).

[2] It will be understood that while the Favourites and Favourite Sons are before the convention from the first, some of the Dark Horses may not appear as aspirants till well on in the balloting. They may be

It may be asked why a Dark Horse often prevails against the Favourites, seeing that either of the latter has a much larger number of delegates in his favour. Ought not the wish of a very large group to have so much weight with the minor groups as to induce them to come over and carry the man whom a powerful section of the party obviously desires? The reason why this does not happen is that a Favourite is often as much hated by one strong section as he is liked by another, and if the hostile section is not strong enough to keep him out by its unaided vote, it is sure to be able to do so by transferring itself to some other aspirant. Moreover, a Favourite has often less chance with the minor groups than a Dark Horse may have. He has not the charm of novelty. His "ins and outs" are known; the delegations weighed his merits before they left their own State, and if they, or the State convention that instructed them, decided against him then, they are slow to adopt him now. They have formed a habit of "antagonizing" him, whereas they have no hostility to some new and hitherto inconspicuous aspirant.

Let us now suppose resolutions and nominating speeches despatched, and the curtain raised for the third act of the convention. The chairman raps loudly with his gavel,[1] announcing the call of States for the vote. A hush falls on the multitude, a long deep breath is drawn, tally books are opened and pencils grasped, while the clerk reads slowly the names of State after State. As each is called, the chairman of its delegation rises and

persons who have never been thought of before as possible candidates. There is therefore always a great element of exciting uncertainty.

[1] The gavel is a sort of auctioneer's hammer used by a chairman to call the attention of the meeting to what he is saying or to restore order. That used at a national convention is often made of thirty-eight pieces of wood from the various States.

announces the votes it gives, bursts of cheering from each faction in the audience welcoming the votes given to the object of its wishes. Inasmuch as the disposition of most of the delegates has become known beforehand, not only to the managers, but to the public through the press, the loudest welcome is given to a delegate or delegation whose vote turns out better than had been predicted.

In the first scene of this third and decisive act the Favourites have, of course, the leading parts. Their object is to produce an impression of overwhelming strength, so the whole of this strength is displayed, unless, as occasionally happens, an astute manager holds back a few votes. This is also the bright hour of the Favourite Sons. Each receives the vote of his State, but each usually finds that he has little to expect from external help, and his friends begin to consider into what other camp they had better march over. The Dark Horses are in the background, nor is it yet possible to say which (if any) of them will come to the front.

The first ballot seldom decides much, yet it gives a new aspect to the battlefield, for the dispositions of some groups of voters who had remained doubtful is now revealed, and the managers of each aspirant are better able to tell, from the way in which certain delegations are divided, in what quarters they are most likely to gain or lose votes on the subsequent ballots. They whisper hastily together, and try, in the few moments they have before the second ballot is upon them, to prepare some new line of defence or attack.

The second ballot, taken in the same way, sometimes reveals even more than the first. The smaller and more timid delegations, smitten with the sense of their weakness, despairing of their own aspirant, and anxious to be

on the winning side, begin to give way; or if this does not happen on the second ballot, it may do so on the third. Rifts open in their ranks, individuals or groups of delegates go over to one of the stronger candidates, some having all along meant to do so, and thrown their first vote merely to obey instructions received or fulfil the letter of a promise given. The gain of even twenty or thirty votes for one of the leading candidates over his strength on the preceding ballot so much inspirits his friends, and is so likely to bring fresh recruits to his standard, that a wily manager will often, on the first ballot, throw away some of his votes on a harmless antagonist that he may by rallying them increase the total of his candidate on the second, and so convey the impression of growing strength.

The breathing space between each ballot and that which follows is used by the managers for hurried consultations. Aides-de-camp are sent to confirm a wavering delegation, or to urge one which has been supporting a now hopeless aspirant to seize this moment for dropping him and coming over to the winning standard. Or the aspirant himself, who, hundreds of miles away, sits listening to the click of the busy wires, is told how matters stand, and asked to advise forthwith what course his friends shall take. Forthwith it must be, for the next ballot is come, and may give the battlefield a new aspect, promising victory or presaging irretrievable defeat.

Any one who has taken part in an election, be it the election of a pope by cardinals, of a town-clerk by the city council, of a fellow by the dons of a college, of a schoolmaster by the board of trustees, of a pastor by a congregation, knows how much depends on generalship. In every body of electors there are men who have no minds of their own; others who cannot make up their

minds till the decisive moment, and are determined by the last word or incident; others whose wavering inclination yields to the pressure or follows the example of a stronger colleague. There are therefore chances of running in by surprise an aspirant whom few may have desired, but still fewer have positively disliked, chances specially valuable when controversy has spent itself between two equally-matched competitors, so that the majority are ready to jump at a new suggestion. The wary tactician awaits his opportunity; he improves the brightening prospects of his aspirant to carry him with a run before the opposition is ready with a counter move; or if he sees a strong antagonist, he invents pretexts for delay till he has arranged a combination by which that antagonist may be foiled. Sometimes he will put forward an aspirant destined to be abandoned, and reserve till several votings have been taken the man with whom he means to win. All these arts are familiar to the convention manager, whose power is seen not merely in the dealing with so large a number of individuals and groups whose dispositions he must grasp and remember, but in the cool promptitude with which he decides on his course amid the noise and passion and distractions of twelve thousand shouting spectators. Scarcely greater are the faculties of combination and coolness of head needed by a general in the midst of a battle, who has to bear in mind the position of every one of his own corps and to divine the positions of those of the enemy's corps which remain concealed, who must vary his plan from hour to hour according to the success or failure of each of his movements and the new facts that are successively disclosed, and who does all this under the roar and through the smoke of cannon.

One balloting follows another till what is called "the

break" comes. It comes when the weaker factions, perceiving that the men of their first preference cannot succeed, transfer their votes to that one among the aspirants whom they like best, or whose strength they see growing. When the faction of one aspirant has set the example, others are quick to follow, and thus it may happen that after thirty or forty ballots have been taken with few changes of strength as between the two leading competitors, a single ballot, once the break has begun, and the column of one or both of these competitors has been "staggered," decides the battle.

If one Favourite is much stronger from the first than any other, the break may come soon and come gently, *i.e.* each ballot shows a gain for him on the preceding ballot, and he marches so steadily to victory that resistance is felt to be useless. But if two well-matched rivals have maintained the struggle through twenty or thirty ballots, so that the long strain has wrought up all minds to unwonted excitement, the break, when it comes, comes with fierce intensity, like that which used to mark the charge of the Old Guard. The defeat becomes a rout. Battalion after battalion goes over to the victors, while the vanquished, ashamed of their candidate, try to conceal themselves by throwing away their colours and joining in the cheers that acclaim the conqueror. In the picturesquely technical language of politicians, it is a Stampede.

To stampede a convention is the steadily contemplated aim of every manager who knows he cannot win on the first ballot.[1] He enjoys it as the most

[1] To check stampeding the Republican Convention of 1876 adopted a rule providing that the roll-call of States should in no case be dispensed with. This makes surprise and tumult less dangerous. (See Stanwood's useful *History of Presidential Elections.*) With the same view the Republican Convention of 1888 ruled that no vote given on any balloting should be changed before the end of that balloting.

dramatic form of victory, he values it because it evokes an enthusiasm whose echo reverberates all over the Union, and dilates the party heart with something like that sense of supernatural guidance which Rome used to have when the cardinals chose a pope by the sudden inspiration of the Holy Spirit. Sometimes it comes of itself, when various delegations, smitten at the same moment by the sense that one of the aspirants[1] is destined to conquer, go over to him all at once. Sometimes it is due to the action of the aspirant himself. In 1880 Mr. Blaine, who was one of the two leading Favourites, perceiving that he could not be carried against the resistance of the Grant men, suddenly telegraphed to his friends to transfer their votes to General Garfield, till then a scarcely considered candidate. In 1884 General Logan, also by telegraph, turned over his votes to Mr. Blaine between the third and fourth ballot, thereby assuring the already probable triumph of that Favourite.

When a stampede is imminent, only one means exists of averting it, that of adjourning the convention so as to stop the panic and gain time for a combination against the winning aspirant. A resolute manager always tries this device, but he seldom succeeds, for the winning side resists the motion for adjournment, and the vote which it casts on that issue is practically a vote for its aspirant, against so much of the field as has any fight left in it. This is the most critical and exciting moment of the whole battle. A dozen speakers rise at once, some to support, some to resist the adjournment, some to protest against debate upon it, some to take points of order, few of which can be heard over the din of the howling multitude. Meanwhile, the managers who have kept

[1] Probably a Dark Horse, for the Favourite Sons, having had their turn in the earlier ballotings, have been discounted ; and are apt to excite more jealousy among the delegates of other States.

their heads rush swiftly about through friendly delegations, trying at this supreme moment to rig up a combination which may resist the advancing tempest. Tremendous efforts are made to get the second Favourite's men to abandon their chief and "swing into line" for some Dark Horse or Favourite Son, with whose votes they may make head till other factions rally to them.

> "In vain, in vain, the all-consuming hour
> Relentless falls."

The battle is already lost, the ranks are broken and cannot be rallied, nothing remains for brave men but to cast their last votes against the winner and fall gloriously around their still waving banner. The motion to adjourn is defeated, and the next ballot ends the strife with a hurricane of cheering for the chosen leader. Then a sudden calm falls on the troubled sea. What is done is done, and whether done for good or for ill, the best face must be put upon it. Accordingly the proposer of one of the defeated aspirants moves that the nomination be made unanimous, and the more conspicuous friends of other aspirants hasten to show their good-humour and their loyalty to the party as a whole by seconding this proposition. Then, perhaps, a gigantic portrait of the candidate, provided by anticipation, is hoisted up, a signal for fresh enthusiasm, or a stuffed eagle is carried in procession round the hall.[1]

Nothing further remains but to nominate a candidate for the vice-presidency, a matter of small moment now that the great issue has been settled. This nomination is frequently used to console one of the defeated aspirants for the presidential nomination, or is handed over to his friends to be given to some politician of their choice. If there be a contest, it is

[1] So at Chicago in 1884.

seldom prolonged beyond two or three ballots. The convention is at an end, and in another day the whole host of exhausted delegates and camp-followers, hoarse with shouting, is streaming home along the railways.

The fever heat of the convention is almost matched by that of the great cities, and indeed of every spot over the Union to which there runs an electric wire. Every incident, speech, vote, is instantly telegraphed to all the cities. Crowds gather round the newspaper offices, where frequent editions are supplemented by boards displaying the latest bulletins. In Washington, Congress can hardly be kept together, because every politician is personally interested in every move of the game. When at last the result is announced, the partisans of the chosen candidate go wild with delight; salvos of artillery are fired off, processions with bands parade the streets, ratification meetings are announced for the same evening, "campaign clubs" bearing the candidate's name are organized on the spot. The excitement is of course greatest in the victor's own State, or in the city where he happens to be resident. A crowd rushes to his house, squeezes his hand to a quivering pulp, congratulates him on being virtually President, while the keen-eyed reporter telegraphs far and wide how he smiled and spoke when the news was brought. Defeated aspirants telegraph to their luckier rival their congratulations on his success, promising him support in the campaign. Interviewers fly to prominent politicians, and cross-examine them as to what they think of the nomination. But in two days all is still again, and a lull of exhaustion follows till the real business of the contest begins some while later with the issue of the letter of acceptance, in which the candidate declares his views and outlines his policy.

CHAPTER LXXI

THE PRESIDENTIAL CAMPAIGN

A PRESIDENTIAL election in America is something to which Europe can show nothing similar. Though the issues which fall to be decided by the election of a Chamber in France or Italy, or of a House of Commons in England, are often far graver than those involved in the choice of A or B to be executive chief magistrate for four years, the commotion and excitement, the amount of "organization," of speaking, writing, telegraphing, and shouting, is incomparably greater in the United States. It is only the salient features of these contests that I shall attempt to sketch, for the detail is infinite.

The canvass usually lasts about four months. It begins soon after both of the great parties have chosen their candidate, *i.e.* before the middle of July; and it ends early in November, on the day when the presidential electors are chosen simultaneously in and by all the States. The summer heats and the absence of the richer sort of people at the seaside or mountain resorts keep down the excitement during July and August; it rises in September, and boils furiously through October.

The first step is for each nominated candidate to

accept his nomination in a letter, sometimes as long as a pamphlet, setting forth his views of the condition of the nation and the policy which the times require. Such a letter is meant to strike the keynote for the whole orchestra of orators. It is, of course, published everywhere, extolled by friendly and dissected by hostile journals. Together with the "platform" adopted at the national party convention, it is the official declaration of party principles, to be referred to as putting the party case, no less than the candidate himself, before the nation.

While the candidate is composing his address, the work of organization goes briskly forward, for in American elections everything is held to depend on organization. A central or national party committee nominated by the national convention, and consisting of one member from each State, gets its members together and forms a plan for the conduct of the canvass. It raises money by appealing to the wealthy and zealous men of the party for subscriptions, and, of course, presses those above all who have received something in the way of an office or other gratification from the party.[1] It communicates with the leading statesmen and orators of the party, and arranges in what district of the country each shall take the stump. It issues shoals of pamphlets, and forms relations with party newspapers. It allots grants from the "campaign fund" to particular persons and State committees, to be spent by them for "campaign purposes," an elastic term which may cover a good deal of illicit expenditure. Enormous sums are sometimes gathered and disbursed by this committee, and the

[1] As a recent statute forbids the levying of assessments for party purposes on members of the Federal civil service, it is deemed prudent to have no Federal official on this committee, lest in demanding subscriptions from his subordinates he should transgress the law.

accounts submitted do not, as may be supposed, answer all the questions they suggest. The committee directs its speakers and its funds chiefly to the doubtful States, those in which eloquence or expenditure may turn the balance either way. There are seldom more than six or seven such States at any one election, possibly fewer.

The efforts of the national committee are seconded not only by State committees, but by an infinite number of minor organizations over the country, in the rural districts no less than in the cities. Some of these are permanent. Others are created for the election alone; and as they contemplate a short life, they make it a merry one. These "campaign clubs," which usually bear the candidates' names, are formed on every imaginable basis, that of locality, of race, of trade or profession, of university affiliation. There are Irish clubs, Italian clubs, German clubs, Scandinavian clubs, Polish clubs,[1] coloured (*i.e.* negro) clubs, Orange clubs. There are young men's clubs, lawyers' clubs, dry-goods clubs, insurance men's clubs, shoe and leather clubs. There are clubs of the graduates of various colleges. Their work consists in canvassing the voters, making up lists of friends, opponents, and doubtfuls, getting up processions and parades, holding meetings, and generally "booming all the time."

This is mostly unpaid labour. But there are also thousands of paid agents at work, canvassing, distributing pamphlets or leaflets, lecturing on behalf of the candidate. It is in America no reproach to a political speaker that he receives a fee or a salary. Even men of eminence are permitted to receive not only their travelling expenses, but a round sum. Whether

[1] At a "parade" of a Polish campaign club in New York in 1884 more than 1000 Polish citizens are reported as present.

the candidate himself takes the field depends on his popular gifts. If he is a brilliant speaker his services are too valuable to be lost; and he is sent on a tour through the doubtful States, where he speaks for weeks together twice or thrice on most days, filling up the intervals with "receptions" at which he has to shake hands with hundreds of male callers, and be presented to ladies scarcely less numerous.[1] The leading men of the party are, of course, pressed into the service. Even if they dislike and have opposed the nomination of the particular candidate, party loyalty and a lively sense of favours to come force them to work for the person whom the party has chosen.[2] An eminent Irishman or an eminent German is especially valuable for a stumping tour, because he influences the vote of his countrymen. Similarly each senator is expected to labour assiduously at his own State, where presumably his influence is greatest, and any refusal to do so is deemed a pointed disapproval of the candidate.

The committees print and distribute great quantities of campaign literature, pamphlets, speeches, letters, leaflets, and one can believe that this printed matter is more serviceable than it would be in England, because a larger part of the voters live in quiet country places, and like something to read in the evening. Even novelettes are composed in the interests of a candidate. I found mention of one, written by a literary colonel, in which "the lovers, while in the most romantic situation, are made to talk about the protective tariff. One-third of the book consists of love and tragedy, and the remainder is an argument for protection. (This is a large propor-

[1] Sometimes he stumps along a line of railroad, making ten minute speeches from the end platform of the last car.

[2] Exceptions are rare, but there was one distinguished senator who refused to take the field for his party's candidate in 1884.

tion of powder to jam.) Thousands of these have been distributed as campaign documents." Sometimes a less ingenuous use is made of the press. On the very eve of the election of 1880, too late for a contradiction to obtain equal publicity, a forged letter, purporting to come from Mr. Garfield, and expressing views on Chinese immigration and labour, distasteful to the Pacific States, was lithographed and scattered broadcast over California, where it told heavily against him. And in 1884, an extract, purporting to come from a pamphlet issued by the "London Free Trade Club" was circulated, in which that (non-existent) body was represented as declaring that "the salvation of England depends on the destruction of American manufactures, and this must be effected by means of free trade and the Democratic party."[1]

Most constant and effective of all is the action of the newspapers. The chief journals have for two or three months a daily leading article recommending their own and assailing the hostile candidate, with a swarm of minor editorial paragraphs bearing on the election. Besides these there are reports of speeches delivered, letters to the editor with the editor's comments at the end, stories about the candidates, statements as to the strength of each party in particular States, counties, and cities. An examination of a few of the chief newspapers during the months of September and October 1884, showed that their "campaign matter" of all kinds formed between one-half and one-third of the total letterpress of the paper (excluding advertisements), and this, be it remembered, every day during those two months. The most readable part of this matter consists in the reports

[1] It was also stated that English clubs sent money to be expended in paying Irish "ex-suspects" to persuade their countrymen to vote against the protectionist candidate!

of the opinion of individual persons, more or less prominent, on the candidate. You find, for instance, a paragraph stating that the Rev. Dr. A., president of such and such a college, or Mr. B., the philanthropist who is head of the Y Z Bank, or ex-Governor C., or Judge D., has said he thinks the candidate a model of chivalric virtue, or fit only for a felon's cell, as the case may be, and that he will vote for or against him accordingly.[1] Occasionally the prominent man is called on by an interviewer and gives a full statement of his views, or he writes to a young friend who has asked his advice a private letter, which is immediately published. The abundance of these expressions or citations of the opinions of private citizens supplies a curious evidence of the disposition of some sections in a democracy to look up to its intellectual and moral leaders. For the men thus appealed to are nearly all persons eminent by their character, ability, learning, or success in business; the merely rich man is cited but rarely, and as if his opinion did not matter, though of course his subscription may. Judges and lawyers, university dignitaries and literary men, are, next to the clergy,[2] the persons most often quoted.

The function of the clergy in elections is very characteristic of the country and the occasion. They

[1] Sometimes a sort of amateur census is taken of the persons occupied in one place in some particular employment, as, for instance, of the professors in a particular college, or even of the clerks in a particular store, these being taken as samples of store-clerks or professors generally; and the party organ triumphantly claims that three-fourths of their votes will be cast for its candidate. Among the "throbs of Connecticut's pulse" described by a newspaper in the fall of 1884, I recollect an estimate of the "proclivities" of the workmen in the Willimantic mills in that State.

[2] An eminent Unitarian clergyman having written a letter condemning a candidate, the leading organ of that candidate in sneering at it, remarked that after all Dr. Clarke's coachman's vote was as good as Dr. Clarke's; to which it was rejoined by a hostile journalist that hundreds of voters would follow Dr. Clarke, and hundreds more be offended at this disrespectful reference to him.

used during the period from 1820 to 1856 to give politics a wide berth, for not only would their advocacy of any particular cause have offended a section among their flocks, but the general sentiment condemned the immixture in politics of a clerical element. The struggle against slavery, being a moral issue, brought them into more frequent public activity. Since the close of that struggle they have again tended to retire. However, the excitement of a presidential election suspends all rules; and it sometimes happens that the charges brought against a candidate involve moral issues which are deemed, at least by partisans, to justify clerical intervention. In the contest of 1884, at any rate, ecclesiastics came well to the front. For months the newspapers were full of the opinions of clergymen. Sermons were reported if they seemed to bear upon the issue. Paragraphs appeared saying that such and such a pastor would carry three-fourths of his congregation with him, whereas the conduct of another in appearing at a meeting on behalf of the opposing candidate was much blamed by his flock. Not many ministers actually took the platform, though there was a general wish to have them as chairmen. But one, the late Mr. Henry Ward Beecher, did great execution by his powerful oratory, artillery all the more formidable because it was turned against the candidate of the party to which he had through his long life belonged.[1] Nor was there any feature in the canvass of that same candidate more remarkable than the assembly of 1018 clergymen of all denominations (including a Jewish rabbi), which gathered at the Fifth Avenue Hotel in New York, to meet him

[1] Mr. Beecher's attitude was deemed so formidable that a number of his congregation were induced to issue a document stating that they did not intend to be influenced by him.

and assure him of their support on moral grounds, immediately before the election day.[1]

From a class usually excluded from politics by custom to a class excluded by law, the transition is easy. Women as a rule keep as much aloof from electoral contests in America as in continental Europe, and certainly more than in England, for I have never heard of their forming an organization to canvass the voters of a district in America, as the (Conservative) Primrose League has done all over England for four years past, and as several women's associations belonging to the Liberal party are now doing in London. Nor are women appointed delegates from any ward primary,[2] as ladies have lately been in some divisions of London. In no State of the Union can they vote at any State election, and therefore neither can they vote at Federal elections. However, the excitement of 1884 drew even women into the vortex. In various cities receptions were tendered by the ladies of each party to the candidate, receptions reported in the public press as politically significant. And a good many of the letters which appeared in the newspapers attacking or defending the candidate bore female signatures. The Women's Suffrage journal gave its support to the Republican party, but a section of the suffragists, incensed at the faithlessness or indifference of both of the parties to their claims, started a presidential candidate of their own, Mrs. Belva C. Lockwood, a lady

[1] One of the clerical speakers spoke of the opposite candidate as receiving the support of "rum, Romanism, and rebellion." This phrase, eagerly caught up, and repeated by hostile newspapers, incensed the Roman Catholics of New York, and was believed to have turned the election against the candidate in whose interest the alliteration was invented. Nothing so dangerous as a friend; especially when he is an amateur.

[2] Women, however, appear as delegates at the conventions of the Prohibition party.

practising law at Washington. She took the stump on her own behalf, but did not ultimately go to the poll.

Speaking and writing and canvassing are common to elections all over the world. What is peculiar to America is the amazing development of the "demonstration" as a means for raising enthusiasm. For three months, processions, usually with brass bands, flags, badges, crowds of cheering spectators, are the order of the day and night from end to end of the country. The Young Men's Pioneer club of a village in the woods of Michigan turns out in the summer evening: the Democrats or Republicans of Chicago or Philadelphia leave their business to march through the streets of these great cities many thousands strong.

When a procession is exceptionally large it is called a Parade. In New York City, on the 29th of October 1884, the business men who supported Mr. James Gillespie Blaine held such a demonstration. They were organized by profession or occupation: the lawyers, 800 strong, forming one battalion, the dry-goods men another,[1] the Produce Exchange a third, the bankers a fourth, the brokers a fifth, the jewellers a sixth, the Petroleum Exchange a seventh, and so on *ad infinitum*.[2] They started from the Bowling-green near the south end of Manhattan Island, and marched right up the city along Broadway to Madison Square, where Mr.

[1] It was stated that the first seven files of the 8000 dry-goods men who walked in this procession represented $150,000,000 (£30,000,000 worth of business.

[2] A dinner was given to Mr. Blaine under the auspices of two noted financial operators, at which two hundred of the wealthiest men in and near New York were present. This was intended to convey the impression that the solid commercial interests of the country were in his favour, but it was of course caught up and turned the other way by antagonists who wished to represent the financiers and railway men as "monopolists and speculators," and therefore dangerous to the people.

Blaine reviewed and addressed them. Rain fell incessantly, and the streets were deep with mud, but neither rain above nor mud below damped the spirits of this great army, which tramped steadily along, chanting various "campaign refrains," such as

"Five, Five, Five Cent Fare;"[1]

but most frequently

"Blaine, Blaine, James G. Blaine,
We don't care a bit for the rain,
O—O—O—O—HI—O."[2]

There were said to have been 25,000 business men in this parade, which was followed soon after by another more miscellaneous Blaine parade of 60,000 Republicans, as well as (of course) by counter parades of Democrats.[3] A European, who stands amazed at the magnitude of these demonstrations, is apt to ask whether the result attained is commensurate with the money, time, and effort given to them. His American friends answer that, as with advertising, it is not to be supposed that shrewd and experienced men would thus spend their money unless convinced that the expenditure was reproductive. The parade and procession business, the crowds, the torches, the badges, the flags, the shouting, all this pleases the participants by making them believe they are effecting something; it impresses the spectators by showing them that other people are in earnest, it strikes the imagination of those who in country hamlets read

[1] Mr. Cleveland had as Governor of New York State vetoed as unconstitutional a bill establishing a uniform fare of 5 cents on the New York City elevated railroads. This act was supposed to have alienated the working men and ruined his presidential prospects.

[2] In the State elections held in Ohio shortly beforehand the Republicans had been victorious, and the omen was gladly caught up.

[3] In the Cleveland Business Men's parade it was alleged that 1500 lawyers had walked, one-third of them Republican "bolters"; but this number was doubtless exaggerated.

of the doings in the great city. In short, it keeps up the "boom," and an American election is held to be, truly or falsely, largely a matter of booming.

If the cynical visitor smiles at these displays, he is constrained to admire the good-humour and good order which prevail. Neither party in the Northern, Middle, and Western States dreams of disturbing the parades or meetings of the other. You might believe, from the acclamations which accompany a procession, that the whole population was with it, for if opponents are present they do not hoot or hiss, and there are always enough sympathizers to cheer. During the hotly-contested elections of 1880 and 1884 there were hardly any collisions or disturbances reported from California to Maine. Even in Virginia, Maryland, Missouri, where the old Southern party is apt to let its angry passions rise against the negroes and their white Republican allies, the breaches of order were in 1884 neither numerous nor serious.[1] There is a large and vicious mob in New York, Chicago, and Cincinnati, but it behaved perfectly well in the two former cities, though badly in the third at the October State elections. Over four-fifths of the Southern States perfect quiet prevailed. It is true that one party could there count on an overwhelming majority, so that there was no excuse for the one to bully nor any inducement for the other to show fight.

The maxim that nothing succeeds like success is nowhere so cordially and consistently accepted as in America. It is the corner-stone of all election work. The main effort of a candidate's orators and newspapers

[1] In Baltimore the Democratic mob maltreated some of the letter-carriers, who, as Federal officials, were presumably Republicans, and there was a little rioting in Virginia.

is to convince the people that their side is the winning one, for there are sure to be plenty of voters anxious to be on that side, not so much from any advantage to be gained for themselves as because reverence for "the People" makes them believe that the majority are right. Hence the exertions to prove that the Germans, or the Irish, or the working men are going for candidate X. or candidate Y. Hence the reports of specimen canvasses showing that seventy per cent of the clerks in a particular bank or eighty per cent of the professors in a particular theological college have declared themselves for X. Hence the announcements of the betting odds for a particular candidate, and the assertion that the supporters of the other man who had put large sums on him are now beginning to hedge.[1] But the best evidence to which a party can appeal is its winning minor elections which come off shortly before the great presidential one. In two States the choice of a governor and other State officers took place, till lately, within the month prior to the 8th of November, in two or three it still takes place in September. If the State is a safe one for the Republicans or the Democrats (as the case may be), the votes cast are compared with those cast at the last preceding similar election, and the inference drawn that one or other party is gaining. If it is a doubtful State the interest is still more keen, and every nerve is strained to carry an election whose issue will presage, and by presaging contribute to, success in the presidential struggle.[2]

[1] There is a great deal of betting on elections, so much that bribery is often alleged to be practised by those who are heavily involved. The constitutions or statutes of some States make it an offence to give or take a bet on an election.

[2] "If the Republicans lose Ohio," said Mr. Schurz in 1884, "there will be a general landslide, and the election will be virtually over." It was currently reported that one party had sent $500,000 (£100,000) into Ohio for the fall elections.

Possibly the candidate or some of his ablest speakers stump this State; probably also it is drenched with money. The inferences from such a contest may be thought uncertain, because State elections are always complicated with local questions, and with the character of the particular candidates for State offices. But it is a maxim among politicians that in a presidential year local issues vanish, the voters being so warmed with party spirit that they go solid for their party in spite of all local or personal obstacles. The truth of this view was illustrated by the fact that Ohio often returns a majority of Democrats to Congress and has a Democratic majority in her own legislature, but has for several elections given a majority for the presidential candidate of the Republican party. The eagerness shown to carry the October elections in this great and often doubtful State used to be scarcely second to that displayed in the presidential contest. She has now put her fall elections later, and makes them coincide (every second term) with the presidential election, in order to avoid the tremendous strain which they had been forced to bear.[1] Before this change it was often made an argument why the party should select its candidate from Ohio, that this would give a better chance of winning the preliminary canter, and thereby securing the advantage of a presageful victory.[2]

So far I have described the contest as one between

[1] No State now holds an October State election, Indiana, whose election fell then, having put it later for the same reason.

[2] There is a touch of superstition in the value set in America upon the first indications of the popular sentiment, like that which made the Romans attach such weight to the vote of the century first called up to vote in the *comitia centuriata*. It was selected by lot, perhaps not merely because the advantage of calling first a century which he might know to be favourable to his own view or candidate was too great a one to be left to the presiding magistrate, but also because its declaration was thus deemed to be an indication of the will of the gods who governed the lot.

two parties and two candidates only. But it is usually complicated by the appearance of other minor parties and minor candidates who, although they have no chance of success, affect the main struggle by drawing off strength from one side or the other. In the elections of 1876, 1880, and 1884, the Prohibitionist party and the Greenback (now the Labour) party each held a national convention, nominated candidates for presidency and vice-presidency, and obtained at the polls a number of votes far too small to carry any single State, and therefore, of course, too small to choose any presidential electors, but sufficient to affect, perhaps to turn, the balance of strength between Republicans and Democrats in two or three of the doubtful States. The Prohibitionist candidate draws most of his votes from the Republican side; the Greenbacker or Labour man from the Democratic: hence there is a sort of tacit alliance during the campaign between the Republican organs and the Greenback party, between the Democratic organs and the Prohibitionists; and conversely much ill blood between Republicans and Prohibitionists, between Democrats and Greenbackers. In 1884, the Democrats charged the Republicans with secretly encouraging and supporting by money the candidature of General Benjamin F. Butler, nominated by the Greenbackers and Labour men, while the Republicans bitterly reproached the temperance people with playing into the hands of the liquor-loving Democrats. Any one can see what an opening these complications give for intrigue, and how much they add to the difficulty of predicting the result.

really nothing in the life or habits of a candidate out of which materials for a reproach may not be drawn. Of one it is said that he is too fond of eating, of another that though he rents a pew in Dr. Y——'s church, he is more frequently seen in a Roman Catholic place of worship, of a third that he deserted his wife twenty-five years ago, of a fourth that he is an atheist. His private conversations are reported; and when he denies the report, third persons are dragged in to refute his version. Nor does criticism stop with the candidate himself. His leading supporters are arraigned and dissected. A man's surroundings do no doubt throw some light upon him. If you are shown into a library, you derive an impression from the books on the shelves and the pictures on the wall; much more then may you be influenced by the character of a man's personal friends and political associates, if they are of a conspicuously good or evil type. But such methods of judging must be applied cautiously. American electioneering carries them beyond reasonable limits.

I do not mean that elections always bring these personal issues prominently to the front. Sometimes, where the candidates excite no strong enthusiasm or repulsion, they remain in the background. Their intrusion into what ought to be a contest of principles is unavoidable when the personal qualities of a candidate may affect the welfare of the country. But it has the unfortunate result of tending to draw attention away from political discussions, and thereby lessening what may be called the educational value of the campaign. A general election in England seems better calculated to instruct the masses of the people in the principles as well as the practical issues of politics, than the longer and generally hotter presidential

rouses to gather up rumours, piece out old though unproved stories of corruption, put the worst meaning on doubtful words, and so construct a damning impeachment, which will be read in party journals by many voters who never see the defence. The worst of this habit of universal invective is that the plain citizen, hearing much which he cannot believe, finding foul imputations brought even against those he has reason to respect, despairs of sifting the evidence in any given case, and sets down most of the charges to malice and "campaign methods,"[1] while concluding that the residue is about equally true of all politicians alike. The distinction between good and bad men is for many voters practically effaced, and you have the spectacle of half the honest men supporting for the headship of the nation a person whom the other half declare to be a knave. Extravagant abuse produces a reaction, and makes the honest supporters of a candidate defend even his questionable acts. And thus the confidence of the country in the honour of its public men is lowered.

Less frequent, but more offensive, are the charges made against the private life of a candidate, particularly in his relations with women. American opinion is highly sensitive on this subject. Nothing damages a man more than a reputation for irregularity in these relations; nothing therefore opens a more promising field to slander, and to the coarse vulgarity which is scarcely less odious, even if less mendacious, than slander itself.

These are the chief heads of attack. But there is

[1] The inquiry into a candidate's honesty is pursued so keenly that even his property tax returns are scrutinized to found charges of his having endeavoured to evade the law. Such a charge played a great part in a recent presidential contest.

really nothing in the life or habits of a candidate out of which materials for a reproach may not be drawn. Of one it is said that he is too fond of eating, of another that though he rents a pew in Dr. Y——'s church, he is more frequently seen in a Roman Catholic place of worship, of a third that he deserted his wife twenty-five years ago, of a fourth that he is an atheist. His private conversations are reported; and when he denies the report, third persons are dragged in to refute his version. Nor does criticism stop with the candidate himself. His leading supporters are arraigned and dissected. A man's surroundings do no doubt throw some light upon him. If you are shown into a library, you derive an impression from the books on the shelves and the pictures on the wall; much more then may you be influenced by the character of a man's personal friends and political associates, if they are of a conspicuously good or evil type. But such methods of judging must be applied cautiously. American electioneering carries them beyond reasonable limits.

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contest in America. The average intelligence of the voter (excluding the negroes) is higher in America than in Britain, and his familiarity not only with the passwords and catchwords of politics but with the structure of his own government is much greater. But in Britain the contest is primarily one of programmes and not of persons. The leaders on each side are freely criticized, and most people are largely influenced by their judgment of the prime minister, and of the person who will become prime minister if the existing ministry be dismissed. Still the men are almost always overshadowed by the principles which they respectively advocate, and as they are men already fully known, men on whom invective and panegyric have been poured for years, there is little inducement to rake up or invent tales against them. Hence controversy turns on the needs of the country, and on the measures which each party puts forward; attacks on a ministry are levelled at their public acts instead of their private characters. Americans who watch general elections in England say that they find in the speeches of English candidates more appeal to reason and experience, more argument and less sentimental rhetoric, than in the discourses of their own campaign orators. To such a general judgment there are, of course, many exceptions. I have read American election speeches, such as those of Mr. Beecher, whose vigorous thinking was in the highest degree instructive as well as stimulative; and the speaking of English candidates is probably, regarded as mere speaking, less effective than that of the American stump.

An examination of the causes which explain this difference belongs to another part of this book. Here I will only remark that the absence from English elections of flags, uniforms, torches, brass bands, parades, and all

the other appliances employed in America, for making the people "enthuse," leaves the field more free for rational discussion. Add to this that whereas the questions discussed on English platforms during the last fifty years have been mainly questions needing argument, such as that of the corn laws in the typical popular struggle which Cobden and Bright and Villiers led, the most exciting theme for an American speaker during a whole generation was one—the existence and extension of slavery—which specially called for emotional treatment. The subjects which now chiefly need to be debated, such as the regulation of the tariff, competing plans of liquor legislation, the currency and labour questions, are so difficult to sift thoroughly before a popular audience that the orator has been apt to evade them or to deal in sounding commonplaces. The tariff issue cannot be evaded much longer, and its discussion may force speakers and hearers to think more closely than has been usual of late years.

Although, however, the presidential contest does less for the formation of political thought and diffusion of political knowledge than might have been hoped from the immense efforts put forth and the intelligence of the voters addressed, it rouses and stirs the public life of the country. One can hardly imagine what the atmosphere of American politics would be without this quadrennial storm sweeping through it to clear away stagnant vapours, and recall to every citizen the sense of his own responsibility for the present welfare and future greatness of his country. Nowhere does government by the people through the people for the people take a more directly impressive and powerfully stimulative form than in the choice of a chief magistrate by twelve millions of citizens voting on one day.

CHAPTER LXXIII

FURTHER OBSERVATIONS ON NOMINATIONS AND ELECTIONS

SEVERAL questions may have occurred to the European reader who has followed the foregoing account of presidential nominations and elections.

The most obvious is—How comes it that a system of nomination by huge party assemblies has grown up so unlike anything which the free countries of Europe have seen?

The nominating convention is the natural and legitimate outgrowth of two features of the Constitution, the restricted functions of Congress and the absolute sovereignty of the people. It was soon perceived that under the rule of party, a party must be united on its candidate in order to have a prospect of success. There was therefore need for a method of selecting the candidate which the whole of a party would recognize as fair and entitled to respect. At first the representatives of the party in Congress assumed the right of nomination. But it was presently felt that they were not entitled to it, for they had not been chosen for any such purpose, and the President was not constitutionally responsible to them, but rather set up to check them. When the congressional caucus had been discredited, the State legis-

latures tried their hands at nominations; but acting irregularly, and with a primary regard to local sentiment, they failed to win obedience. It began to be seen that whom the people were to elect the people must also nominate. Thus presently the tumultuous assemblies of active politicians were developed into regular representative bodies, modelled after Congress, and giving to the party in each State exactly the same weight in nominating as the State possessed in voting. The elaborate nominating scheme of primaries and conventions which was being constructed for the purpose of city, State, and congressional elections, was applied to the election of the President, and the national convention was the result. We may call it an effort of nature to fill the void left in America by the absence of the European parliamentary or cabinet system, under which an executive is called into being out of the legislature by the majority of the legislature. In the European system no single act of nomination is necessary, because the leader of the majority comes gradually to the top in virtue of his own strength.[1] In America there must be a single and formal act: and this act must emanate from the people, since it is to them that the party leader, when he becomes chief magistrate, will be responsible. There is not quite so strong a reason for entrusting to the convention the function of declaring the aims and tenets of the party in its platform, for this might properly be done by a caucus of the legislature. But as the President is, through his veto power, an independent

[1] The nearest parallel to the American nominating system is the election of the leader of a party by the Opposition in the House of Commons, of which there has been only one instance, the choice of Lord Hartington by the Liberal members in that House in 1875; and on that occasion the other candidates withdrew before a vote was needed. What the Americans call "House caucuses," *i.e.* meetings of a party in the larger House of the legislature, are not uncommon in England.

branch of the legislature, the moment of nominating him is apt for a declaration of the doctrines, whereof the party makes him the standard-bearer.

What effects has the practice of nomination by conventions had upon the public life of the country? Out of several I select two. It makes political struggles turn more upon men and less upon measures than might have been expected in a country where equality is so fully established, and the citizens are so keenly interested in public questions. The victory of a party in a presidential election depends upon its being unanimous in its support of a particular candidate. It must therefore use every effort to find, not necessarily the best man, but the man who will best unite it. In the pursuit of him, it is distracted from its consideration of the questions on which it ought to appeal to the country, and may form its views on them hastily or loosely. The convention is the only body authorized to declare the tenets and practical programme of the party. But the duty of declaring them is commonly overshadowed by the other duty of choosing the candidate, which naturally excites warmer feelings in the hearts of actual or potential office-holders. Accordingly delegates are chosen by local conventions rather as the partisans of this or that aspirant than as persons of political ability or moral weight; and the function of formulating the views of the party may be left to, and ill-discharged by, men of an inferior type.

A further result will have been foreseen by those who have realized what these conventions are like. They are monster meetings. Besides the eight hundred delegates there are some ten to fourteen thousand spectators on the floor and in the galleries. It goes without saying that such a meeting is capable neither of discussing political

questions and settling a political programme, nor of deliberately weighing the merits of rival aspirants for the nomination. Its programme must be presented to it cut and dry, and this is the work of a small committee. In choosing a candidate, it must follow a few leaders.[1] And what sort of leaders do conventions tend to produce? Two sorts—the intriguer and the declaimer. There is the man who manipulates delegates, and devises skilful combinations. There is also the orator, whose physical gifts, courage, and readiness enable him to browbeat antagonists, overawe the chairman, and perhaps, if he be possessed of eloquence, carry the multitude away in a fit of enthusiasm. For men of wisdom and knowledge, not seconded by a commanding voice and presence, there is no demand, and little chance of usefulness, in these tempestuous halls.

Why, however, it may also be asked, should conventions be so pre-eminently tempestuous, considering that they are not casual concourses, but consist of persons duly elected, and are governed by a regular code of procedure? The reason may be found in the fact that in them are united the two conditions which generate excitement, viz. very large numbers and important issues to be determined. In no other modern assemblies[2] do these conditions concur. Modern deliberative assemblies are comparatively small—the House of Representatives has only 325 members; the French Chamber 584; while in

[1] Hamilton had acutely remarked in 1788 that the larger an assembly the greater is the power of a few in it. See Vol. I. p. 265.

[2] In the ancient world the assemblies of great democratic cities like Athens or Syracuse presented both these conditions; they had large numbers present, and almost unlimited powers. But they were at any rate permanent bodies, accustomed to meet frequently, composed of men who knew one another, who respected certain leaders, and applauded the same orators. The American convention consists of men who come together once only in their lives, and then for a week or less.

the British House of Commons there is sitting space for only 400. Large popular gatherings, on the other hand, such as mass meetings, are excitable in virtue of their size, but have nothing to do but pass resolutions, and there is seldom controversy over these, because such meetings are attended only by those who agree with the summoners. But a national convention consists of more than eight hundred delegates, as many alternates, and some twelve thousand spectators. It is the hugest mass meeting the world knows of. Not only, therefore, does the sympathy of numbers exert an unequalled force, but this host, larger than the army with which the Greeks conquered at Marathon, has an issue of the highest and most exciting nature to decide, an issue which quickens the pulse even of those who read in cold blood afterwards how the votes fell as the roll of States was called, and which thrills those who see and listen, and, most of all, those who are themselves concerned as delegates, with an intensity of emotion surpassing, in proportion to the magnitude of the issue, that which attends the finish of a well-contested boat race. If you wish to realize the passionate eagerness of an American convention, take the House of Commons or the French Chamber during a division which is to decide the fate of a ministry and a policy, and raising the numbers present twenty-fold, imagine the excitement twenty-fold hotter. Wanting those wonderful scenes which a great debate and division in Parliament provide the English with, America has evolved others not less dramatic. The contrast between the two countries is perhaps most marked in this, that in Parliament the strife is between two parties, in an American Convention between the adherents of different leaders belonging to the same party. We might have expected that in the more democratic country more would turn

upon principles, less upon men. It is exactly the other way. The struggle in a convention is over men, not over principles.

These considerations may serve to explain to a European the strange phenomena of a convention. But his inquiry probably extends itself to the electoral campaign which follows. "Why," he asks, "is the contest so much longer, more strenuous, and more absorbing than the congressional elections, or than any election struggle in Europe, although Europe is agitated by graver problems than now occupy America? And why does a people externally so cool, self-contained, and unimpulsive as the American work itself up into a fever of enthusiasm over an issue of little permanent importance between two men, neither of whom will do much good or can do much harm?"

The length of the contest is a survival. The Americans themselves regret it, for it sadly interrupts both business and pleasure. It is due to the fact that when communication was difficult over a rough and thinly settled country, several months were needed to enable the candidates and their orators to go round. Now railways and telegraphs have drawn the continent so much together that five or six weeks would be sufficient. That the presidential election is fought more vehemently than congressional elections seems due to its coming only half as often; to the fact that the President is the dispenser of Federal patronage, and to the habit formed in days when the President was the real head of the party, and his action in foreign affairs was important, of looking on his election as the great trial of party strength. Besides, it is the choice of one officer by the whole country, a supreme political act in which every voter has a share, and the same share; an act which fills the whole of

the party in all of the States with the sense that it is feeling and thinking and willing as one heart and mind. This simultaneity of effort, this concentration of interest upon one person and one polling day, gives to the struggle a sort of tension not to be looked for where a number of elections of different persons are going on in as many different spots, nor always at the same time. In congressional elections each constituency has to think first of itself and its own candidate. In the presidential elections all eyes are fixed on the same figure; the same personal as well as political issue is presented to the nation. Each polling district in a State, each State in the Union, emulates every other in the efforts it puts forth to carry the party ticket.

To explain why the hard-headed self-possessed Americans go so wild with excitement at election times is a more difficult task. See what the facts are: There has not been a single presidential candidate, since Abraham Lincoln's re-election in 1864 (always excepting General Grant), of whom his friends could say that he had done anything to command the gratitude of the nation. Some of these candidates had been skilful party leaders, others had served with credit in the Civil War. None could be called distinguished in the sense in which, I will not say, Hamilton, Jefferson, Marshall, Webster, but J. Q. Adams, Clay, Benton, Calhoun, Seward, Stanton, and Chase, were distinguished men. However, let us take Mr. Blaine and Mr. Cleveland. One had been Speaker of the House, and was unquestionably a skilful debater in Congress, an effective speaker on a platform, a man socially attractive, never forgetting a face or a service. The other had made a shrewd and upright Mayor of Buffalo and Governor of New York State. Compare the services rendered to the country by them, or by any

other candidate of recent times, with those of Mazzini, Garibaldi, Cavour, and Victor Emmanuel to Italy, of Bismarck and Moltke to Germany, even of Thiers and Gambetta to France in her hour of peril. Yet the enthusiasm shown for Mr. Blaine (who seems to have drawn out the precious fluid at a higher temperature than his rival), the demonstrations made in his honour wherever he appeared, equalled anything done, in their several countries, for these heroes of Italy, Germany, or France. As for England, where two great political leaders, towering far above their fellows, have of late years excited the warmest admiration and the bitterest dislike from friends and foes, imagine eight hundred English barristers turning out from the Temple and Lincoln's Inn to walk in slow procession from London Bridge to South Kensington, shouting themselves hoarse for Gladstone or Disraeli!

In trying to account for this fact, it is well to begin by taking the bull by the horns. Is the world right in deeming the Americans a cool and sober people? The American is shrewd and keen, his passion seldom obscures his reason; he keeps his head in moments when a Frenchman, or an Italian, or even a German, would lose it. Yet he is also of an excitable temper, with emotions capable of being quickly and strongly stirred. That there is no contradiction between these qualities appears from the case of the Scotch, who are both more logical and more cautious in affairs than the English, but are also more enthusiastic, more apt to be swept away by a passionate movement.[1] Moreover, the Americans like excitement. They like it for its own sake, and go

[1] Sir Walter Scott remarks of Edinburgh, early in the eighteenth century, that its mob was one of the fiercest in Europe. The history of the Covenant from 1638 downwards is full of episodes which indicate how much more excitable is Scotch than English blood.

wherever they can find it. They surrender themselves to the enjoyment of this pleasure the more willingly because it is comparatively rare, and relieves the level tenor of their ordinary life. Add to this the further delight which they find in any form of competition. The passion which in England expresses itself in the popular eagerness over a boat race or a horse race, extends more widely in America to every kind of rivalry and struggle. The presidential election, in which two men are pitted against one another over a four months' course for the great prize of politics, stirs them like any other trial of strength and speed; sets them betting on the issue, disposes them to make efforts for a cause in which their deeper feelings may be little engaged.

These tendencies are intensified by the vast area over which the contest extends, and the enormous multitude that bears a part in it. The American imagination is peculiarly sensitive to the impression of great size. "A big thing" is their habitual phrase of admiration. In Europe, antiquity is what chiefly commands the respect of some minds, novelty what rouses the interest of others. Beyond the Atlantic, the sense of immensity, the sense that the same thought and purpose are animating millions of other men in sympathy with himself, lifts a man out of himself, and sends him into transports of eagerness and zeal about things intrinsically small, but great through the volume of human feeling they have attracted. It is not the profoundity of an idea or emotion, but its lateral extension which most quickly touches the American imagination. For one man who can feel the former a hundred are struck by the latter; and he who describes America must remember that he has always to think first of the masses.

These considerations may help to explain the disproportion that strikes a European between the merits of the presidential candidate and the blazing enthusiasm which he evokes. It is not really given to him as an individual, it is given to the party personified in him, because he bears its banner, and its fervour is due, not even so much to party passion as to the impressionist character of the people, who desire to be excited, desire to demonstrate, desire, as English undergraduates say, "to run with the boats," and cheer the efforts of the rowers. As regards the details of the demonstrations, the parades and receptions, the badges and brass bands and triumphal arches, any one can understand why the masses of the people—those who in Europe would be called the lower middle and working classes—should relish these things, which break the monotony of their lives, and give them a sense of personal participation in a great movement. Even in London, least externally picturesque among European cities, when the working men turn out for a Hyde Park meeting they come marshalled in companies under the banners of their trade unions or other societies, carrying devices, and preceded by music. They make a somewhat scrubby show, for England does not know how to light up the dulness of her skies and streets by colour in costume or variety in design. But the taste for display is there as it is in human nature everywhere. In England, the upper class is shy of joining in any such "functions," even when they have a religious tinge. Its fastidiousness and sense of class dignity are offended. But in America, the sentiment of equality is so pervading that the rich and cultivated do not think of scorning the popular procession; or if some do feel such scorn, they are careful to conceal it. The habit of demonstrating with bands and banners and

emblems was formed in days when the upper class was very small, and would not have dreamt of standing aloof from anything which interested the crowd; and now, when the rich and cultivated have grown to be as numerous, and, in most respects, as fastidious as the parallel class in Europe, the habit is too deeply rooted to be shaken. Nobody thinks of sneering. To do as the people do is a tribute to the people's majesty. And the thousand lawyers who shout "James G. Blaine, O-h-i-o," as they march through the October mud of Broadway, have no more sense that they are making themselves ridiculous than the European noble who backs with repeated obeisances out of the presence of his sovereign.

CHAPTER LXXIV

TYPES OF AMERICAN STATESMEN

As trees are known by their fruits, and as different systems of government evidently tend to produce different types of statesmanship, it is pertinent to our examination of the American party system to inquire what are the kinds of statesmen which it engenders and ripens to maturity. A democracy, not less than any other form of government, needs great men to lead and inspire the people. The excellence therefore of the methods democracy employs may fairly enough be tested by the excellence of the statesmen whom these methods call forth. Europeans are wont to go farther, and reason from the character of the statesmen to the character of the people, a convenient process, because it seems easier to know the careers and judge the merits of persons than of nations, yet one not universally applicable. In the free countries of Europe, the men who take the lead in public affairs may be deemed fair specimens of its best talent and character, and fair types, possibly of the virtues of the nation, though the temptations of politics are great, and certainly of its practical gifts. But in two sorts of countries one cannot so reason from the statesmen to the masses. In despotic monarchies the minister is often merely the

king's favourite, who has risen by unworthy arts, or, at any rate, not by merit; and in a democracy where birth and education give a man little advantage in the race, a political career may have become so unattractive as compared with other pursuits that the finest or most ambitious spirits do not strive for its prizes, but generally leave them to men of the second order.

This second case is, as we have seen, to some extent the case of America. We must not therefore take her statesmen as types of the highest or strongest American manhood. The national qualities come out fully in them, but not always in their best form. I speak of the generations that have grown up since the great men of the Revolution epoch died off. Some of those men were the peers of the best European statesmen of the time: one of them rises in moral dignity above all his European contemporaries. The generation to which J. Q. Adams, Jackson, Webster, Clay, Calhoun, and Benton belonged is less impressive, perhaps because they failed to solve a question which may have been too hard for any one to solve. Yet the men I have mentioned were striking personalities who would have made a figure in any country. Few of the statesmen of the third or Civil War period enjoyed more than a local reputation when it began, but in its course several of them developed remarkable powers, and one became a national hero. The fourth generation is now upon the stage. The Americans confess that not many who belong to it have as yet won fame. The times, they remark, are comparatively quiet. What is wanted is not so much an impassioned popular leader nor a great philosophic legislator as men who will administer the affairs of the nation with skill and rectitude, and who, fortified by

careful study and observation, will grapple with the economic problems which the growth of the country makes urgent. I admit this, but think that much must also be ascribed to the character of the party system which, as we have seen, is unfavourable to the development of the finest gifts. Let us note what are the types which that system displays to us.

In such countries as England, France, Germany, and Italy there is room and need for five sorts of statesmen. Men are wanted for the management of foreign and colonial policy, men combining the talents of a diplomatist with a wide outlook over the world's horizon. The needs of social and economic reform, grave in old countries with the mistakes of the past to undo, require a second kind of statesman with an aptitude for constructive legislation. Thirdly there is the administrator who can manage a department with diligence and skill and economy. Fourthly comes the parliamentary tactician, whose function it is to understand men, who frames cabinets and is dexterous in humouring or spurring a representative assembly.[1] Lastly we have the leader of the masses, who, whether or no he be a skilful parliamentarian, thinks rather of the country than of the chamber, knows how to watch and rouse the feelings of the multitude, and rally a great party to the standard which he bears aloft. The first of these has no need for eloquence; the second and third can get on without it; to the fourth it is almost, yet not absolutely, essential; it is the life breath of the fifth.[2]

[1] Englishmen will think of the men who framed the new Poor Law as specimens of the second class, of Sir G. C. Lewis as a specimen of the third, of Lord Palmerston as a specimen of the fourth. The aptitudes of the third and fourth were united in Sir Robert Peel.

[2] It need hardly be said that the characteristic attributes of these several types are often found united in the same person; indeed no one can rise high who does not combine at least two of the four latter.

Let us turn to America. In America there are few occasions for the first sort of statesman, while the conditions of a Federal government, with its limited legislative sphere, are unfavourable to the second, as frequently changing cabinets are to the third. It is chiefly for persons of the fourth and fifth classes we must look. Persons of those classes we shall find, but in a different shape and guise from what they would assume in Europe. American politics seem at this moment to tend to the production of two types, the one of whom may be called *par excellence* the man of the desk or of the legislature, the other the man of the convention and the stump. They resemble the fourth and fifth of our European types, but with instructive differences.

The first of these types is usually a shrewd, cool, hard-headed man of business. He is such a man as one would find successful in the law or in commerce if he had applied his faculties to those vocations. He has mostly been, is often still, a practising counsel and attorney. He may lack imagination and width of view; but he has a tight grip of facts, a keen insight into men, and probably also tact in dealing with them. That he has come to the front shows him to possess a resolute and tenacious will, for without it he must have been trodden down in the fierce competition of a political career. His independence is limited by the necessity of keeping step with his party, for isolated action counts for little in America, but the tendency to go with one's party is so inbred there that a man feels less humiliated by waiving his private views than would be the case in Europe. Such compliance does not argue want of strength. As to what is called "culture," he has often at least a susceptibility to it, with a wish to acquire it which, if he has risen from humble beginnings, may

contrast oddly with the superficial roughness of his manner. He is a ready and effective rather than a polished speaker, and is least agreeable when, forsaking the solid ground of his legal or administrative knowledge, he attempts the higher flights of eloquence.

Such a man does not necessarily make his first reputation in an assembly. He may begin as governor of a State or mayor of a large city, and if he earns a reputation there, can make pretty sure of going on to Congress if he desires it. In any case, it is in administration and the legislative work which deals with administration that he wins his spurs. The sphere of local government is especially fitted to develop such talents, and to give that peculiar quality I have been trying to describe. It makes able men of affairs; men fit for the kind of work which needs the combination of a sound business head and the power of working along with others. One may go farther and say, that this sort of talent is the talent which during the last half century has been most characteristic of the American people. Their greatest achievements have lain in the internal development of their country by administrative shrewdness, ingenuity, promptitude, and an unequalled dexterity in applying the principle of association, whether by means of private corporations or of local public or quasi-public organisms. These national characteristics reappear in Federal politics, not always accompanied by the largeness of vision and mastery of the political and economic sciences which that wider sphere demands.

The type I am trying to describe is less brilliant than those modern Europe has learned to admire in men like Bismarck or Cavour, Thiers or Gambetta, perhaps one may add, Tisza or Minghetti. But then the conditions

required for the rise of the last-named men do not exist in America, nor is her need for them pressing. America would have all she wants if such statesmen as I have described were more numerous; and if a philosophic mind, capable of taking in the whole phenomena of transatlantic society, and propounding comprehensive solutions for its problems, were more common among the best of them. Persons of this type have hitherto been most frequently found in the Senate, to which they usually rise from the House of Representatives or from a State legislature. They are very useful there; indeed, it is they who have given it that, apparently now declining, authority which it has enjoyed.

The other kind of statesman is the product of two factors which give to American politics their peculiar character, viz. an enormous multitude of voting citizens and the existence of a wonderful network of party organizations for the purpose of selecting and carrying candidates for office. To move the masses, a man must have the gifts of oratory; to rule party committees, he must be a master of intrigue. The stump and the committee-room are his sphere. There is a great deal of campaign speaking to be done at State elections, at congressional elections, above all, in presidential campaigns. It does not flow in such a perennial torrent as in England, for England has since 1876 become the most speech-flooded country in the world, but it is more copious than in France, Italy, or Germany. The audiences are less ignorant than those of Europe, but their critical standard is not higher; and whereas in England it is Parliament that forms most speakers and creates the type of political oratory, Congress renders no such service to America. There is therefore, I think, less presumption in America than in Europe

that the politician who makes his way by oratory is a man either of real eloquence or of vigorous thinking power. Able, however, he must be. He is sure to have fluency, a power of touching either the emotions or the imagination, a command of sonorous rhetoric. Probably he has also humour and a turn for quick retort. In fact, he must have the arts—we all know what they are—which please the multitude; arts not blamable in themselves, but needing to be corrected by occasional appearances before a critical audience. These arts joined to a powerful voice and a forcible personality will carry a man far. If he can join to them a ready and winning address, a geniality of manner if not of heart, he becomes what is called magnetic. Now, magnetism is among the highest qualities which an American popular leader can possess. Its presence may bring him to the top. Its absence may prevent him from getting there. It makes friends for him wherever he goes. It immensely enhances his powers in the region of backstairs politics.

For besides the visible work on the stump, there is the invisible work of the committee-room, or rather of the inner conclave, whose resolves are afterwards registered in the committee, to be still later laid before the convention. The same talent for intrigue which in monarchies or oligarchies is spent within the limits of a court or a knot of ruling families, here occupies itself with bosses and rings and leaders of political groups. To manipulate these men and groups, to know their weaknesses, their ambitions, their jealousies, to play upon their hopes and fears, attaching some by promises, entrapping others through their vanity, browbeating others into submission, forming combinations in which each partisan's interest is so bound up with that of the

aspiring statesman that he is sure to stand faithfully by his chief—all this goes a long way to secure advancement under the party system.

It may be thought that between such aptitudes and the art of oratory there is no necessary connection. There are intriguers who are nothing but intriguers, useless on the stump or on the platform of a convention. But fluent oratory, as distinguished from eloquence, is an art which most able men can acquire with practice. In popularly-governed countries it is as common as it is worthless. And a link between the platform and the committee-room is found in the quality of magnetism. The magnetic man attracts individuals just as he captivates masses. Where oratory does not need either knowledge or reflection, because the people are not intent upon great questions, or because the parties evade them, where power of voice and skill in words, and ready sympathy with the feelings and prejudices of the crowd, are enough to command the ear of monster meetings, there the successful speaker will pass for a statesman. He will seem a fit man to put forward for high office, if he can but persuade the managers to run him; and therefore the other side of his activity is spent among and upon the managers.

It sometimes happens that the owner of these gifts is also a shrewd, keen, practical man, so that the first type is blended with the second. Nor is there anything to prevent the popular speaker and skilled intriguer from also possessing the higher attributes of statesmanship. This generation has seen the conjunction both in America and in France. But the conjunction is rare; not only because these last-named attributes are themselves rare, but because the practice of party intrigue is unfavourable to their development. It narrows a man's

mind and distorts his vision. His eye, accustomed to the obscurity of committee-rooms, cannot range over the wide landscape of national questions. Habits of argument formed on the stump seldom fit a man to guide a legislature. In none of the greatest public men that have adorned America do we discern the features of the type just sketched. Hamilton was no intriguer, though he once executed a brilliant piece of strategy.[1] Neither was Clay or Webster. Jefferson, who added an eminent talent for party organization and management to his powers as a thinker and writer, was no speaker; and one might go through the whole list without finding one man of the first historic rank in whom the art of handling committees and nominating conventions was developed to that pitch of excellence to which far inferior men have now brought it. National conventions offer the best field for the display of the peculiar kind of talent which this type of statesman exhibits. To rouse eight hundred delegates and ten thousand spectators needs powerful lungs, a striking presence, address, and courage. A man capable enough in Congress may fail in this arena. But less than half the work of a convention is done on the public stage. Delegates have to be seen in private, combinations arranged, mines laid and those of the opponent discovered and countermined, a distribution of the good things in the gift of the party settled with swarms of hungry aspirants. Easy manners, tact, and suppleness, a reputation for remembering and requiting good turns and ill turns—in fact, many of the qualities which make a courtier are the qualities which the intrigues of a convention require, develop, and perfect.

[1] In agreeing that the national capital should be placed in the South in return for the support of two Southern men to his plan for the settlement of the public debt.

Besides such causes inherent in the present party system as check the growth of first-class statesmen in America, there are two springing from her constitutional arrangements which must not be forgotten. One is the disconnection of Congress from the executive. How this works to prevent true leadership has been already explained.[1] Another is the existence of States, each of which has a political life and distinct party organization of its own. Men often rise to eminence in a State without making their mark in national politics. They may become virtual masters of the State either in a legitimate way by good service to it or in an illegitimate way as its bosses. In either case they have to be reckoned with when a presidential election comes round, and are able, if the State be a doubtful one, to dictate their terms. Thus they push their way to the front without having ever shown the qualities needed for guiding the nation; they crowd out better men, and they make party leadership and management even more of a game than under the spoils system and the convention system it naturally becomes. The State vote comes to be in national politics what the ward vote is in city politics, a commodity which a boss or ring can dispose of; the power of a man who can influence it is greater than his personal merits entitle him to; and the kind of skill which can make friends of these State bosses and bring them into a "pool" or working combination becomes valuable, if not essential, to a national party leader. In fact, the condition of things is not wholly unlike that of England in the middle of last century, when a great borough-monger like the Duke of Newcastle was a power in the country, who must be not only consulted and propitiated at every crisis, but even admitted to a ministry if it was to secure

[1] See Chapters XXI. XXV. and XXVI. in Vol. I.

a parliamentary majority. When a crisis rouses the nation, the power of these organization-mongers or vote-owners vanishes, just as that of the English borough-owning magnate was checked on like occasions, because it is only when the people of a State are listless that their Boss is potent. Unable to oppose a real wish of the masses, he can use their vote only by professing obedience while guiding it in the direction of the men or the schemes he favours.

This remark suggests another. I have remarked that among statesmen of the first of the two types described there are always ability and integrity sufficient for carrying on the regular business of the country. Men with those still higher gifts which European nations look for in their prime ministers (though they do not always find them) have of late years been rare. The Americans admit the fact, but explain it by arguing that there has been no crisis needing those gifts. Whether this is true may be doubted. Men of constructive statesmanship were surely needed in the period after the Civil War: and it is possible that a higher statesmanship might have averted the war itself. However, I am giving the view the Americans take. When the hour comes, they say, it will bring the man. It brought Abraham Lincoln. When he was nominated by the famous convention of 1860 his name had been little heard of beyond his own State. But he rose at once to the level of the situation, and that not merely by virtue of strong clear sense, but by his patriotic steadfastness and noble simplicity of character. If this was luck, it was just the kind of luck which makes a nation hopeful of its future, and inclined to overlook the faults of the methods by which it finds its leaders.

CHAPTER LXXV

WHAT THE PEOPLE THINK OF IT

THE European reader who has followed thus far the description I have attempted to give of the working of party politics, of the nominating machine, of the spoils system, of elections and their methods, of venality in some legislative and municipal bodies, may have been struck by its dark lines. He sees in this new country evils which savour of Old World corruption, even of Old World despotism. He is reminded sometimes of England under Sir Robert Walpole, sometimes of Russia under the Czar Nicholas. Assuming, as a European is apt to do, that the working of political machinery fairly reflects the temper, ideas, and moral standard of the governing class, and knowing that America is governed by the whole people, he may form a low opinion of the people. Perhaps he leaps to the conclusion that they are corrupt. Perhaps he more cautiously infers that they are heedless. Perhaps he conceives that the better men despair of politics and wash their hands of it, while the mass of the people, besotted with a self-confidence born of their rapid material progress, are blind to the consequences which the degradation of public life must involve. All these views one may hear expressed by persons who have visited America, and of course more confidently

by persons who have not. It is at any rate a plausible view that whatever public opinion there may be in America upon religion, or morality, or literature, there can be little public opinion about politics, and that the leading minds, which in all countries shape and direct opinion, have in America abdicated that function, and left the politicians to go their own way.

So far is this from being the truth that there is no country where public opinion is stronger or more active than in the United States, none where it has the field so completely to itself, because aristocracies like those of Europe do not exist, and because the legislative bodies are relatively less powerful and less independent. It may seem a paradox to add that public opinion is on the whole wholesome and upright. Nevertheless, this also is true.

Here we are brought face to face with the cardinal problem of American politics. Where political life is all-pervading, can practical politics be on a lower level than public opinion? How can a free people which tolerates gross evils be a pure people? To explain this is the hardest task which one who describes the United States sees confronting him. Experience has taught me, as it teaches every traveller who seeks to justify when he returns to Europe his faith in the American people, that it is impossible to get Englishmen at any rate to realize the co-existence of phenomena so unlike those of their own country, and to draw the inferences which those phenomena suggest to one who has seen them with his own eyes. Most English admirers of popular government, when pressed with the facts, deny them. But I have already admitted them.

To present a just picture of American public opinion one must cut deeper than the last few chapters

have done, and try to explain the character and conditions of opinion itself beyond the Atlantic, the mental habits from which it springs, the organs through which it speaks. This is what I propose to do in the chapters which follow. Meanwhile it is well to complete the survey of the actualities of party politics by stating in a purely positive, or as the Germans say "objective," way, what the Americans think about the various features of their system portrayed in these last chapters, about the Spoils system and the Machine, about corruption and election frauds. I omit attempts at explanation; I seek only to sum up the bare facts of the case as they strike one who listens to conversation and reads the newspapers.

Corruption.—Most of it the people, by which I mean not the masses but all classes of the people, do not see. The proceedings of Congress excite less interest than those of legislative chambers do in France or England. Venality occurs chiefly in connection with private legislation, and even in Washington very little is known about this, the rather as committees deliberate with closed doors. Almost the only people who possess authentic information as to what goes on in the Capitol are railroad men, land speculators, and manufacturers who have had to lobby in connection with the tariff. The same remark applies, though less forcibly, to the venality of certain State legislatures. A farmer of Western New York may go through a long life without knowing how his representative behaves at Albany. Albany is not within his horizon.[1]

The people see little and they believe less. True, the party newspapers accuse their opponents of such

[1] This remark does not apply to the malversations of officials in cities like New York or Philadelphia. These nobody can help knowing.

offences, but the newspapers are always reviling somebody; and it is because the words are so strong that the tale has little meaning. For instance, in a recent presidential contest charges (as to whose truth I of course express no opinion) affecting the honour of one of the candidates were brought against him by journals supporting the other candidate, and evidence tendered in support of them. The immense majority of his supporters did not believe these charges. They read their own newspapers chiefly, which pooh-poohed the charges. They could not be at the trouble of sifting the evidence, against which their own newspapers offered counter arguments, so they quietly ignored them. I do not say that they disbelieved. Between belief and disbelief there is an intermediate state of mind.

The habit of hearing charges promiscuously bandied to and fro, but seldom probed to the bottom, makes men heedless. So does the fact that prosecutions frequently break down even where there can be little doubt as to the guilt of the accused. A general impression is produced that things are not as they should be, yet the line between honest men and dishonest men is not sharply drawn, because those who are probably honest are attacked, and those who are almost certainly dishonest escape punishment. The state of mind of the average citizen is a state rather of lassitude than of callousness. He comes to think that politicians have a morality of their own, and must be judged by it. It is not his morality; but because it is professional, he does not fear that it will infect other plain citizens like himself.

Some people shrug their shoulders and say that politicians have always been so. Others, especially among the cultivated classes, will tell you that they were

their hands of the whole affair. "It is only the politicians —what can you expect from the politicians?" But there are also many who are shocked, and who, as already observed, exert themselves through the press, and by agitating where they see an opportunity of catching the public ear, to purify politics. Leaving out the cynics on the one side, and the perfectionist reformers on the other, and looking at the bulk of ordinary citizens, the fair conclusion from the facts is that many do not realize the evil who ought to realize it and be alarmed, and that those who do realize it are not sufficiently alarmed. They take it too easily. Yet now and then when roused they will inflict severe penalties on the givers and receivers of bribes.[1]

Election Frauds. — As these are offences against popular government and injure the opposite party, they excite stronger, or at least more general disapproval than do acts of venality, from which only the public purse suffers. No one attempts to palliate them; but it is hard to prove, and therefore hard to punish or suppress them. Legislative remedies have been tried, and fresh ones are constantly being tried. If people are less indignant than they would be in England, it is because they are less surprised. The evil is, however, not widespread, chiefly occurring in large cities. There is one exception to the general condemnation of the practice. In the Southern States negro suffrage produced, during the few years of "carpet-bagging" and military government which followed the war, incredible mischief. When these States recovered full self-government, and the former "rebels" were readmitted

[1] A recent instance is afforded in the punishment of the New York aldermen who sold the right of laying a horse-car line in Broadway. See also Chapter LXXXIX. in Vol. III. on the Philadelphia Gas Ring.

to the suffrage, the upper class of the white population "took hold" again, and in order, as they expressed it, "to save civilization," resolved that come what might the negro and white Republican vote should not, by obtaining a majority in the State legislatures, be in a position to play these pranks further. The negroes were at first roughly handled or, to use the technical term, "bulldosed," but as this excited anger at the North, it was found better to attain the desired result by manipulating the elections in various ways, "using no more fraud than was necessary in the premises," as the pleaders say. As the negroes are obviously unfit for the suffrage, these services to civilization have been leniently regarded even at the North, and are justified at the South by men quite above the suspicion of personal corruption.

The Machine.—The perversion by Rings and Bosses of the nominating machinery of primaries and conventions excites a disgust whose strength is proportioned to the amount of fraud and trickery employed, which of course is not great when the "good citizens" make no counter exertions. The disgust is everywhere less than a European expects, for it is mingled with amusement. The Boss is a sort of joke, albeit an expensive joke. "After all," people say, "it is our own fault. If we all went to the primaries, or if we all voted an Independent ticket, we could make an end of the boss." There is an odd sort of fatalism in their view of democracy. If a thing exists in a free country, it has a right to exist, for it exists by the leave of the people, who may be deemed to acquiesce in what they do not extinguish.

The Spoils System.—As to favouritism in patronage and spoils, I have already explained why the average citizen tolerates both. He has been accustomed to think rotation in office a recognition of equality, and a check

on the growth of that old bugbear, an "aristocracy of office-holders." He does not see how favouritism can be prevented, for competitive examinations have seemed pedantic. Usage has sanctioned a certain amount of jobbery, so you must not be too hard on a man who does no more than others have done before him.

The conduct, as well as the sentiment, of the people is so much better than the practice of politicians that it is hard to understand why the latter are judged so leniently. No ordinary citizen, much less a man of social standing and high education, would do in his private dealings what many politicians do with little fear of disgrace. The career of the latter is not destroyed, while the former would lose the respect of his neighbours, and probably his chances in the world. Europe presents no similar contrast between the tone of public and that of private life.

There is, however, one respect in which a comparison of the political morality of the United States with that of England does injustice to the former.

The English have two moralities for public life, the one conventional or ideal, the other actual. The conventional finds expression not merely in the pulpit, but also in the speeches of public men, in the articles in leading newspapers and magazines. Assuming the normal British statesman to be patriotic, disinterested, truthful, and magnanimous, it treats every fault as a dereliction from a well-settled standard of duty, a quite exceptional dereliction which disentitles the culprit to the confidence even of his own party, but does not affect the generally high tone of British political life. The actual morality, as one gathers it in the lobbies of the legislative chambers, or the smoking-rooms of political clubs, or committee-rooms at contested elec-

tions, is a different affair. It regards (or has till very lately regarded) the bribery of voters as an offence, only when detection has followed; it assumes that a minister will use his patronage to strengthen his party or himself; it smiles at election pledges as the gods smiled at lovers' vows; it defends the abuse of parliamentary rules; it tolerates equivocations and misleading statements proceeding from an official even when they have not the excuse of state necessity.

Perhaps this is only an instance of the tendency in all professions to develop a special code of rules less exacting than those of the community at large. As a profession holds some things to be wrong, because contrary to its etiquette, which are in themselves harmless, so it justifies other things in themselves blamable. In the mercantile world, agents play sad tricks on their principals in the matter of commissions, and their fellow merchants are astonished when the courts of law compel the ill-gotten gains to be disgorged. At the English universities, everybody who took a Master of Arts degree was, until lately, required to sign the Thirty-nine Articles of the Church of England. Hundreds of men signed who did not believe, and admitted that they did not believe, the dogmas of this formulary; but nobody in Oxford thought the worse of them for a solemn falsehood. We all know what latitude, as regards truth, a "scientific witness," honourable enough in his private life, permits himself in the witness box. Each profession indulges in deviations from the established rule of morals, but takes pains to conceal these deviations from the general public, and continues to talk about itself and its traditions with an air of unsullied virtue. What each profession does for itself most individual men do for themselves. They judge themselves by themselves, that is to say, by their

surroundings and their own past acts, and thus erect in the inner forum of conscience a more lenient code for their own transgressions than that which they apply to others. We all know that a fault which a man has often committed seems to him slighter than one he has refrained from and sees others committing. Often he gets others to take the same view. "It is only his way," they say; "it is just like Roger." The same thing happens with nations. The particular forms in which faults like corruption, or falsehood, or unscrupulous partisanship have appeared in the recent political history of a nation shock its moral sense less than similar offences which have taken a different form in some other country.

Now England, while accustomed to judge her own statesmen, as well as her national behaviour generally, by the actual standard, and therefore to overlook many deflections from the ideal, always applies the conventional or absolute standard to other countries, and particularly to America, which has been subjected to that censorious scrutiny which the children of an emigrant brother receive on their return from aunts and uncles.

How then does America deal with herself?

She is so far lenient to her own defects as to judge them by her past practice; that is to say, she is less shocked by certain political vices, because these vices are familiar, than might have been expected from the generally high tone of her people. But so far from covering things up as the English do, professing a high standard, and applying it rigorously to other countries, but leniently to her own offspring, she gives an exceptionally free course to publicity of all kinds, and allows writers and speakers to paint the faults of her politicians in strong, not to say exaggerated, colours. Such excessive candour is not an

unmixed gain. It removes the restraint which the maintenance of a conventional standard imposes. There is almost too little of make-believe about Americans in public writing, as well as in private talk, and their dislike to humbug, hypocrisy, and what they call English pharisaism, not only tends to laxity, but has made them wrong in the eyes of the Old World their real moral sensitiveness. Accustomed to see constant lip-service rendered to a virtue not intended to be practised, Europeans naturally assume that things are in the United States several shades darker than they are painted, and interpret frankness as cynicism. Were American politics judged by the actual and not the conventional standard of England, the contrast between the demerits of the politicians and the merits of the people would be less striking.

APPENDIX

NOTE TO CHAPTER XLIX

Specimens of Provisions in State Constitutions limiting the taxing and borrowing powers of State Legislatures and local authorities [1]

ARKANSAS: CONSTITUTION OF 1874

ARTICLE XVI. Section 1. Neither the State nor any city, county, town, or other municipality in this State shall ever loan its credit for any purpose whatever. Nor shall any county, city, town, or other municipality ever issue any interest bearing evidences of indebtedness, except such bonds as may be authorized by law to provide for and secure the payment of the present existing indebtedness, and the State shall never issue any interest-bearing treasury warrants or scrip.

Section 7. No city, town, or other municipal corporation other than provided for in this article, shall levy or collect a larger rate of taxation in any one year on the property thereof than one half of one per centum of the value of such property as assessed for State taxation during the preceding year.

COLORADO: CONSTITUTION OF 1876

ARTICLE XI. Section 6. No county shall contract any debt by loan in any form, except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges; and such indebtedness contracted in any one year shall not exceed the rates upon the taxable property in such county following, to wit:

[1] See also Constitution of California, *post*, Art. xi. § 18, and Art. xvi.

counties in which the assessed valuation of taxable property shall exceed five millions of dollars, one dollar and fifty cents on each thousand dollars thereof; counties in which such valuation shall be less than five millions of dollars, three dollars on each thousand dollars thereof; and the aggregate amount of indebtedness of any county, for all purposes, exclusive of debts contracted before the adoption of this Constitution, shall not at any time exceed twice the amount above herein limited, unless when, in manner provided by law, the question of incurring such debt shall, at a general election, be submitted to such of the qualified electors of such county as in the year last preceding such election shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favour of incurring the debt; but the bonds, if any be issued therefor, shall not run less than ten years; and the aggregate amount of debt so contracted shall not at any time exceed twice the rate upon the valuation last herein mentioned: Provided, that this section shall not apply to counties having a valuation of less than one million of dollars.

Section 7. No debt by loan in any form shall be contracted by any school district for the purpose of erecting and furnishing school buildings or purchasing grounds, unless the proposition to create such debt shall first be submitted to such qualified electors of the districts as shall have paid a school tax therein in the year next preceding such election, and a majority of those voting thereon shall vote in favour of incurring such debt.

Section 8. No city or town shall contract any debt by loan in any form, except by means of an ordinance, which shall be irrepealable until the indebtedness therein provided for shall have been fully paid or discharged, specifying the purposes to which the funds to be raised shall be applied, and providing for the levy of a tax not exceeding twelve mills on each dollar of valuation of taxable property within such city or town, sufficient to pay the annual interest and extinguish the principal of such debt within fifteen but not less than ten years from the creation thereof; and such tax, when collected, shall be applied only to the purposes in such ordinance specified until the indebtedness shall be paid or discharged; but no such debt shall be created unless the question of incurring the same shall, at a regular election for councilmen, aldermen, or officers of such city or town, be submitted to a vote of such qualified electors thereof as shall, in the year next preceding, have

paid a property-tax therein, and a majority of those voting on the question, by ballot deposited in a separate ballot box, shall vote in favour of creating such debt; but the aggregate amount of debt so created, together with the debt existing at the time of such election, shall not at any time exceed three per cent of the valuation last aforesaid. Debts contracted for supplying water to such city or town are excepted from the operation of this section.

ILLINOIS: CONSTITUTION OF 1870

Article IX. Section 8. County authorities shall never assess taxes, the aggregates of which shall exceed seventy-five cents per one hundred dollars valuation, except for the payment of indebtedness existing at the adoption of this Constitution, unless authorized by a vote of the people of the county.

Section 12. No county, city, township, school district, or other municipal corporation shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for the State and county taxes previous to the incurring of such indebtedness.

Any county, city, school district, or other municipal corporation incurring any indebtedness as aforesaid, shall, before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same.

PENNSYLVANIA: CONSTITUTION OF 1873

Article IX. Section 8. The debt of any county, city, borough, township, school district, or other municipality or other incorporated district, except as herein provided, shall never exceed seven per centum upon the assessed value of the taxable property therein, nor shall any such municipality or district incur any new debt or increase its indebtedness to an amount exceeding two per centum upon such assessed valuation of property without the assent of the electors thereof at a public election.

NEW YORK: CONSTITUTIONAL AMENDMENT OF 1884 (to Art. viii. § 11 of Constitution of 1846)

No county containing a city of over one hundred thousand inhabitants, or any such city, shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation.

The amount hereafter to be raised by tax for county or city purposes in any county containing a city of over one hundred thousand inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real personal estate of such county or city.

NOTE TO CHAPTER LXI

EXPLANATION (BY MR. G. BRADFORD) OF THE NOMINATING MACHINERY AND ITS PROCEDURE IN THE STATE OF MASSACHUSETTS [1]

1. *Ward and City Committees.*—The city is divided into wards by act of the city council prescribed by the legislature (number of wards in the city of Boston, twenty-five). Each ward in its primary meetings appoints a ward committee of five for the party: that is, the Republican primary appoints a Republican, and the Democratic primary a Democratic committee with varying number of members. This committee attends to the details of elections, such as printing and distributing notices and posters, and also ballots, canvassing voters, collecting and disbursing money, etc. The ward primaries nominate candidates for the common council of the city (consisting of seventy-two members), who are elected in and must be residents of the ward. The several ward committees constitute the city committee, which is thus a large body (practically a convention), and represents all the wards. The city committee chooses from its members a president, secretary, and treasurer, and each ward committee chooses one of its members as a member of a general executive committee, one for a general finance committee, and one for a general printing committee. The city committee formerly, acting as

[1] Copyright by Gamaliel Bradford, 1888.

a convention, nominated the party candidates for the elective offices, which are now the mayor, the aldermen (twelve chosen at large over the city), the members of the school committee, and the street commissioners. The Democratic city committee does this still; but much dissatisfaction was caused among the Republicans by the fact that wards which had but very few Republican voters had an equal share of power in the city committee, and therefore in making nominations. (It will be seen that in organizing the national convention a similar difficulty has been encountered.) The Republican city committee has therefore ceased to make nominations, but calls upon the wards to send delegates, in proportion to their Republican vote, to a general convention for the nomination of candidates. The party lines are, however, very loosely drawn, especially in cities outside of Boston, and anybody may nominate candidates with chance of success proportional to his efforts.

In the towns as apart from the cities, the people, in primary of each party, elect a town committee which corresponds to the ward committees of the city. The town and city committees call the primaries which elect their successors; and thus the system is kept alive. The city committee may by vote modify the structure, mode of election and functions, both of itself and of the ward committees, but in the town this power lies with the caucus or primary. The above account applies to the city of Boston, but the principles are substantially the same throughout the cities of Massachusetts, the main difference being in thoroughness of organization.

2. *County.*—The county is much less important in New England than in any other part of the country. There are to be chosen, however, county commissioners (three in number, one retiring each year, having charge of roads, jails, houses of correction, registry of deeds, and, in part, of the courts), county treasurer, registrar of deeds, registrar of probate, district attorney, and sheriff. These candidates are nominated by party conventions of the county, called by a committee elected by the last county convention. The delegates are selected by ward and town primaries at the same time with other delegates.

3. *State.*—First as to representatives to State legislature, 240 in number. The State is districted as nearly as may be in proportion to population. If a ward of a city, or a single town, is entitled to a representative, the party candidate is nominated in the primary, and must be by the Constitution (of the State) a resident in the dis-

trict. If two or more towns, or two or more wards send a representative in common, the candidate is nominated in cities by a joint caucus of the wards interested called by the ward and city committee, and in the towns by a convention called by a committee elected by the previous convention. The tendency in such cases is that each of these towns or wards shall have the privilege of making nomination in turn of one of its residents.

As regards senators the State is divided into forty districts. The district convention to nominate candidates is called by a committee elected by the preceding convention, and consists of delegates elected by ward and town primaries at the same time with those for State, county, and councillor conventions. Each senatorial district convention elects one member of the State central committee.

The convention for nominating members of the governor's council (eight in number) also appoints a committee to call the next convention.

The State convention consists of delegates from ward and town primaries in proportion to their party votes at last elections, and is summoned by the State central committee, consisting of forty members, elected in October by senatorial convention, and taking office on 1st January. The State committee organizes by choice of chairman, secretary, treasurer, and executive committee, who oversee the whole State campaign. The State convention nominates the party candidates for governor, lieutenant-governor, secretary of state, treasurer, auditor, attorney-general.

4. *National.*—First, representatives to Congress. Massachusetts is entitled to twelve, and is divided into twelve districts. The convention in each district to nominate party candidates is called every two years by a committee elected by the last convention. The delegates from wards and primaries are elected at the same time with the other delegates. As United States senators are chosen by the State legislatures, no nominating convention is needed. Next are to be chosen, every four years, delegates to the National convention,—that is, under present party customs, two for each senator and representative of the State in Congress. For Massachusetts, therefore, at the present time, twenty-eight. The delegates corresponding to the representative districts are nominated by a convention in each district, called in the spring by the same committee which calls the congressional representative nominating convention in the autumn. The delegates corresponding to senators

are chosen at a general convention in the spring, called by the State central committee from wards and primaries, as always; and the twenty-eight delegates at the meeting of the National convention choose the State members of the National committee.

The National convention for nominating party candidates for President is called by a National committee, elected one member by the delegates of each State at the last National convention. The National convention (and this is true in general of all conventions) may make rules for its own procedure and election—as, for example, that all State delegates shall be chosen at large instead of by districts. At the last National convention it was complained that the delegates from the Southern States, which had scarcely any Republican vote, had just as much power in making the nomination as any Northern State. The National convention therefore instructed the National committee to report a plan for adjusting this difficulty, which the latter are now at work upon. The National committee manage the party campaign, sending money and speakers to the weaker States, issue documents, collect subscriptions, and dispense general advice.

NOTE TO CHAPTER LXX

A NEWSPAPER ACCOUNT OF THE REPUBLICAN NATIONAL NOMINATING CONVENTION OF 1884[1]

"As early as 10 o'clock on the fourth day of the convention most of the seats were filled, and by 11, every inch of standing room, so far as any was allowed to be occupied, was taken. The windows were also filled, and men fastened themselves on the timbers that are so numerous and so unornamental along the sides of the structure. It was a tumultuous crowd, but a very good-natured one, and the noise of conversation when the Chairman struck his gavel for order was like the low roar of the sea.

"Now a man of God, with a bald head, calls the Deity down into the melée and bids him make the candidate the right one and induce the people to elect him in November; and the idea is so in harmony with the thoughts of many who believe that only by supernatural means can James G. Blaine be elected, that the low tone of the prayer, which was not much above the character of a ward speech,

[1] From the *Chicago Herald*.

provokes general laughter from those who pay any attention to it. As soon as the farce is over a lull falls over the entire assembly and a serious mood becomes universal. Tally sheets are ready, pencils are out, the delegates who are still toiling with the weak and weakening the stubborn, hurry to their places, while the gavel keeps up its heavy staccato.

"The balloting begins. The strain of anxiety is sternest between the Blaine cohorts and the still valiant but no longer formidable following of Arthur. Every time a good vote is recorded for either there are cheers, whistlings, waving of handkerchiefs, calls of all sorts most unearthly in their hideousness, and it is apparent that the entire ten thousand are quite as well posted about the likelihood of the vote from each state and territory as are the managers themselves. Every novelty is instantly appreciated, and is followed by a lively recognition.

"When the vote of Arkansas is announced and it is found divided with Blaine the sibilant murmur flies, 'Clayton!' California's solid vote is vociferously given to the White Plume;[1] a hearty cheer ascends, and is instantly sent back with equal heartiness by the multitude outside, to whom the proceedings are being faithfully recited by the pickets straddled on the lofty window-sills. Colorado is cheered, too; and the one vote from Florida, with the one vote from Alabama previously recorded, shows that the backbone of the solid South is weakening at the very outset. A lusty Arthur cheer greets the unbroken twenty-four of Georgia. . . . Whenever a Southern State is found divided it is greedily seized as a Blaine omen, and the solitary vote for the White Plume acknowledged by Massachusetts is accepted as a most precious sign of the indulgence of Providence. For such favour was not expected from among the pharisees.

"A pin might have been heard drop while New York is being counted, and Blaine's capture of so considerable a portion of its ballot is the occasion of gleeful folly. The same anxiety waits the confession of Ohio and Pennsylvania. All parties are highly elated when the ballot of these two great constituencies is announced. A number of the States are unable to believe that their respective chairmen are men of truth; for they demand the roll-call, and the process is not only tedious but it generally shows that the chair-

[1] Mr. Blaine, who is commonly known as the Plumed Knight, having been once so called in an ecstatic peroration. So Mr. Logan was called the Black Eagle.

man was perfectly correct. A great deal of laughter is created by the delegation of the District of Columbia. It is composed of two persons, Frank Conger and a coloured associate. Frank announces that the District of Columbia casts two votes for Arthur. The coloured man mounts his chair, challenges the accuracy of the count, and demands that the delegation be polled. Amid unbounded laughter his name is solemnly called, he records one vote, in stentorian tones, for 'James G. Blaine!' and this comedy is repeated on every subsequent ballot. In the final one we will find the coloured man mounting upon the chair and delivering the vote of the District of Columbia, to wit, two votes, 'solid for Blaine.' Then up jumps Frank Conger, challenges the count, demands the poll, and gets it with round after round of cheers, and volley after volley of laughter.

"At last the whisper of reckoning the totals absorbs the convention and the multitude. With a mighty shriek of triumph the Blaine cohorts are on the chairs, yelling and shouting; flags are waving, thousands of infernal little whistles are making the air hideous, idiots are waving open umbrellas, and at the top of the din the band snorts out something which is quickly drowned. The Arthur men are not cast down. They have hope left—and nothing more. Blaine has 334½ and the President only 278[1]—but that gap may be closed.

"A second ballot is ordered, and is begun while the auditorium is full of disorder, which is destined not to subside, but to grow worse and worse until pandemonium is loose. Every change of importance is in Blaine's favour, and the yelling and whistling and all the noises known to lunacy and wicked joy become chronic. Blaine has ascended to 349 and the President loiters in the distance with only 276. The outbreak that followed the first ballot is repeated and intensified. Men become monkeys and maniacs with hope and fear, and the rushing to and fro, the whispering with mouths at delegates' ears, the clatter and shouting and shrieking are intolerable. No other candidate has become so dangerous. The contest is still between the President and Blaine of Maine. A third ballot is ordered. With difficulty and only moderate success the Chair obtains order and the call of States is proceeded with, while the excitement grows more and more keen.

"It is felt that on this ballot Arthur must recede to make room

[1] Mr. Arthur was President in 1884.

for the favourite of the combination, if combination has indeed been made. There are excited and hurried consultations among Blaine's young brigadiers—and a fine lot of active fellows he has on the floor—while there is collusion and consultation between such representatives of *belles lettres* as G. W. C. and L., whose hand C. takes with no apparent consciousness that it is ungloved and black. S. B. D. loses his temper, gesticulates, threatens, bullies, rushes around like an angry steer, defies Chair and sergeant and mace and the Lord himself, if necessary, to rescue his friend from the ruin rapidly approaching. The scene is one of intrigue, bargaining, and purchasing. It is everywhere mouth to ear, with significant nods or shakes; here a pale group hoarsely discusses their chances, there the aged H. is whispering to a frowsy Senegambian, while mingling everywhere are whites, blacks, browns, and cinnamons, as happy in each other's companionship as young bears in cages at a menagerie. The gavel raps, raps, raps, raps. As well beat the air with a feather. Until the bargains are made and the treaty completed there can be no progress. At last the ballot is announced; Blaine, 375; Arthur, 274. No dark horse; no third. The plume is waving on high and the Arthurian reign is over.

"Then a scene discreditable and all but violent ensues. The field is up against the favourite. If a recess can be had such combinations may be made as will down the Knight, and it is a matter of indifference who is taken up. Away with them all. Only slay the man that the masses of the Republican party have in three successive conventions sought to nominate—for good or ill; who has had no patronage, no organization, no claims except such as great personality arouse, and who is at last apparently within easy reach, but still desperately distant from the greatest victory a Republican can achieve—the nomination for President of the United States. For half an hour all the spirits of noise, anger, disdain, frenzy, despair, are let loose.

"When the storm is raging at its height, the Chair paralyzed, the thousands of guests screaming, yelling, no delegation seated, most of the people mounted on their chairs, and all vociferous; when all the resources of the machinery of the convention have been utterly exhausted, and nothing remains in behalf of peace or tranquillity, the smooth, kindly face and stalwart form of Stephen B. Elkins, Blaine's confidential manager, is seen over the edge of the platform. He waves a small, well-shaped hand gently for a

moment, and lo! as if Canute had found the sea obedient, the Blaine men drop into their seats, wipe their brows and puff out their short breath to make room for easy breathing. The storm is over. M., acting with great tact for Blaine, acts on Elkins' diplomatic suggestion, and, with a brief and clear speech with a cheer in its final phrase, advises Blaine's friends to waive all technicalities, let the roll of States be called on the motion to take a recess, 'and,' he cried, with ascending pitch and swelling tone, rich with the sense of victory already achieved, 'and vote it down!'

"Vote it down they did, and in a trice, while the field remains demoralized, without generals or following, the third ballot is taken. The day is won. The stampede begins. The Logan column precipitates a full run into the Blaine camp. In another half hour the whole multitude is crazy with rapture, for the multitude was for Blaine, honestly and loyally all the time, and the scene which follows the formal declaration of his nomination with 520 votes was one of sheer ecstasy. Transparencies, one with a great rooster from Kansas, were paraded up and down the aisles. A great black eagle is borne up and down, and the rooster and the eagle have a crow together when they meet in the march, while all the time the air is full of shouting and the blatant band adds to the confusion, for that shouting mass would drown the howl of a forest. The ebb comes; adjournment is taken until evening.

"On reassembling the nomination of John A. Logan for second place on the ticket is found to be a foregone conclusion. A great many very bad speeches are made, and there is a shy and pensive disposition on the part of Massachusetts and New York to intimate that for one day they have really had to take a considerable quantity of acid diet; and if the convention of the great party of purity, progress, piety, principle, probity, property, etc., would at least give them a Vice-President who would be a little less objectionable than the President it had nominated they would be very much obliged for the small favour. With fan covering one eye and an eye-glass on the other, the dilettanti minority archly but sadly hints that Gresham or Lincoln would suit her better. But the party of the people, the party of poverty, the party of pluck, the party of patriotism, the party of philanthropy, the party of pensions, the party in which the peasant is the peer of the prince—delights in snubbing the pharisaic minority. When Mr. C. states pensively that New York wants time to make up her mind and count up her

votes, a delegate calls out, 'Let her go home,' and nobody offers her any serious objection. She counts it up in due time; and, although with the solitary exception of a merely capricious vote for Fairchild, every other State and every Territory in the United States has cast its solid ballot for Black Jack, who will put into the campaign a terrific roar, New York has the impertinence to drop her courtesy in mock deference, draw her ample skirts aside and go out of the convention, leaving her compliments, to a slight extent, for Gresham and Lincoln. Then the nomination of Logan goes through with a whoop, and the work is done.

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"'Lord! What fools these mortals be.' Yet Puck was never at a political convention. Is there something in the atmosphere of such a place that robs reason of her faculty and transforms humans into some other species?

"Look at that man who has taken off his coat on the announcement of the ballot nominating Blaine. He is standing in the very blaze of the hot afternoon sun streaming through the windows. He has tied a red silk handkerchief around the top of his umbrella and secured his hand to the handle; and there he is, waving the ridiculous and meaningless combination with all the muscular power he possesses. He never exercised half as much energy in any useful cause. That woman has fastened her blue veil on the top of her husband's walking-stick, and, having mounted her chair, is bobbing it up in air and bringing it down spirally, and doing this for five or ten minutes without consciousness of its absurdity, although it may not be clear to her that she is thus promoting the election of James G. Blaine, for she evidently forgets that all women are in the condition of the Territories who were so enthusiastic for Blaine four years ago, and had their young zeal snubbed by the sarcastic Roscoe [Conkling], who reminded them that 'They have no votes.' The woman near by, who is old enough to know better, is singing the 'Sweet by and by,' and alternating it with 'Jerusalem's my happy home.' The boy is pounding the floor with a piece of scantling he has broken off a partition. The other boy has a bird whistle, and is running opposition to the steam tugs that seem to have heard Blaine is nominated, and seem to know that Logan is going to be, and, recognizing kindred accomplishments, have already begun the celebration.

"Those men are tearing down the state shields, and are going

to fasten them on their swelling bosom and march up and down the aisles; there they go. These men are engaged on a wager to see how high they can throw their hats. That young lady is crying real tears because Blaine is nominated, and for her sweet life she does not know what interest she has in the nomination, anyhow. In fact, it seems to be the non-voters that constitute the muscle and sinew of the campaign racketry—a word made indispensable by political conventions. All the time that we have been observing these trifles 10,000 sane persons have been continuously howling, shrieking, singing, snorting, clapping their hands, stamping their feet, waving their hats, waving their bonnets by their long strings, dancing in the irregular, accented way peculiar to savages and semi-civilized communities, and they appear to think that all this is a demonstration in support of our free institutions. Now a few thousand people cry 'Sdown, sdown!' which undoubtedly means 'sit down,' but that only makes the rest crazier. The hoot goes up in pitch, thickens in volume, and the familiar tiger is introduced. The 'hi, hi!' which is exasperating in the extreme except to devotees of Wagner, who naturally admire irregular musical forms, is also introduced, and is taken up and repeated like small chain-lightning from east to west on a summer evening. Here is a man who cannot 'Hi, hi!' So he forms his lips into an O, and utters a monotone 'Coo, coo,' as if he thinks he is a mechanical cuckoo in a Swiss clock. There are at least a hundred dismal black umbrellas open and waving; yet we are under roof, and there is not a drop of rain. One umbrella has just turned inside out and performed hari-kari upon its own poor ribs, instead of, for justice's sake, upon those of its proprietor. The fat woman has lifted the little girl on the shoulders of a slim young man, and the child has put her hands together, and is saying, in a high, shrill key, 'God bless James G. Blaine; God bless James G. Blaine,' and we all wonder what for.

"Now a floral helmet, with a beautiful snowy plume of the finest imported horse-hair, is produced at the Chairman's desk, and the whole house goes simply wild. It is a happy thought, that it is.

. . . . . .

"Now the din has grown perfectly infernal, just because somebody tried to stop it; and Good gracious, sir, will you kindly omit to knock a fellow's head off with your bootjack? That's what he brought to support our free institutions. He was 'shinin 'em up' out in the street, and has climbed in through a window, and is now

waving that deadly weapon over his head as if it were the banner Excelsior carried up the Alps. All this racketry has been going by the watch for seven minutes, for a week by one's lacerated ears; and all because James G. Blaine is nominated for President. At this moment there is not the slightest indication that it will ever stop.

"But it is nothing to the racket there will be all over the United States before he is elected President.

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COMMENTS ON THE CONVENTION.

"The distinguishing feature of the campaign for President is the effort of the office-holding element to secure delegates. As first shown in this paper, more than 100 holders of Federal positions from the Southern States alone appear in convention, all for Arthur. The majority of the non-office-holding delegates from the same States are selected only by sufferance of the former, who are the leaders and bosses of Republican politics. The influence of office-holding appears strong in the Administration's behalf in the North also, and it may safely be said that but for this agency, directly and indirectly, 200 of the 276 recorded for Mr. Arthur on the first ballot would have been added to the columns of other candidates.

"The immediate advisers of the President were not idle either. The work of Mr. Secretary Chandler shows up well in New Hampshire, the sole Republican State giving Arthur a majority of her votes yesterday. Mr. Commissioner Evans did his best in Kentucky. Assistant Postmaster-General Hatton worked hard though fruitlessly in Iowa. Postmaster-General Gresham himself was alert and early in Indiana, where, by smart tactics, ten Arthur delegates were secured, despite an absence of popular feeling in favour of the President's nomination.

"The reformers, independents, and conservatives of New England and New York rally about Edmunds. They gather some delegates for him, achieve a strategic victory at Utica, and then attack Mr. Blaine's reputation with an old charge. The son of never-satisfied Ohio plans a shrewd and not over-frank and creditable campaign, the while proclaiming himself not a candidate, managing at length to secure a bare majority of the delegates from his State.

"The various forces arrive at Chicago. It is soon discovered that the news we had received of Blaine's great strength with the Republican people, wherever there are Republican majorities, was

trustworthy. Despite the office-holders, the conservatives, Logan and Sherman, it is seen Blaine is ahead of any rival. With his delegates come not only the old-time enthusiasm, determination, and intensity of popular feeling at home, but politicians, shrewd, tireless, and experienced, which are new and welcome features in Blaine's convention management. They pull their coats. The field is worked row by row and hill by hill. It is apparent from the first that Blaine will win, barring accident. Only the blind, stupid, or indifferent could fail to see it. With such strength from the people and such an array of political sagacity to handle it, defeat would have been disgraceful.

"The Administration stands with its feet upon the South, reaching imploringly toward the North. Into the South, quick and sure, goes Elkins. Rather into the South had he gone two months ago by a well-kept secret conspiracy with Powell Clayton and Kerrens and Roots and others of Arkansas. This State comes to Chicago solid for Arthur. At the proper moment its nearly complete desertion to Blaine is announced. Arthur's foundation crumbles under his feet, and there is consternation among his followers. Man by man, by a hundred influences, some of them doubtless questionable, the Blaine operators break the lines of the Administration's solid South. It is the beginning of the practical triumph already seen to be logical.

"But a slight reverse comes. Powell Clayton, who arranged the Arkansas defection, is selected by the national committee for temporary chairman. He is a man of objectionable record. It is given out the chairmanship is his reward by the Blaine people for his treachery to Arthur. He is set up as Blaine's man. The opposition, quickly welded by opportunity, plans a sudden blow. It is delivered, and Blaine's man falls. It is hailed as an anti-Blaine triumph.

"Too late was it discovered that the selection of Clayton was an Arthur trap into which Blaine fell. The national committee was not a Blaine committee, and Clayton was first named by an Arthur man, Arthur members voting for him. The child was of course immediately said to belong to the Blaine managers, and they could not deny it without mortally offending Clayton. They fattened it and stood by it.

"Encouraged by its first tactical victory, the opposition makes renewed efforts. It has of necessity become a fight of the field against the favourite. It quickly degenerates into 'anything to

beat Blaine.' It is eager, bitter, and peculiar. Dudes and roughs, civil service reformers and office-holding bosses, short-hairs and college presidents—many men of various kinds of ambition or selfishness join in midnight conferences, cartoon circulation, or desperate parliamentary tactics. The first noticeable effect of the alliance to drag down the leader is a solidification of all his forces. The wavering become firm, the indifferent determined. Like an old guard they rally round their leader.

"The opposition flounders and struggles to make something of itself. It agrees to keep the prize from Blaine if possible, but it cannot agree that any other man shall have it. Harmony in spoils-hunting becomes discord in spoils-dividing. Logan refuses all combination. The Lincoln boom collapses. The General Sherman scheme fails. To throw Arthur to Edmunds is impossible. To transfer Edmunds to Arthur is merely to send Logan and Sherman to Blaine. Logan will not have Edmunds; the Edmunds men do not want Logan. Arthur also prefers Blaine to Sherman. Gresham is looked upon as Arthur's man.

"Seeking but not finding the man with whom to beat Blaine, the opposition fights for time. It desperately contends for postponement of the inevitable. The end comes, as had been expected, and precisely as foreshadowed in these columns. Blaine's naked starting strength is about 360, but by prudent and skilful handling of individual delegates his managers poll only 334 on the first ballot. Their reserve strength does the business. The gain of fifteen votes from first ballot to second is the signal for the break. But so tenacious are the allies that a recess is demanded. Hardly fair play, even in the dubious game of politics. Intense feeling springs up. We have the singular spectacle of a mob of gentlemen. There is great danger that the convention will end in a row, and the nomination, if made, become a doubtful honour. One clear-headed man sees this danger, by timely word and commanding presence averts it, and on roll-call a recess is refused. The next ballot makes Blaine—Ohio starting the break, Illinois finishing it. Logan consents to take second place, and so Foraker's name is not presented by Ohio. The convention shouts for the ticket and adjourns, wondering how many New Yorkers will join in bolting it."

They did well to wonder, for it was the bolters of New York that turned the scale against the Republican candidate in the election.

CONSTITUTION OF THE STATE OF CALIFORNIA[1]

Adopted in Convention at Sacrámento, March 3, A.D. 1879; submitted to and ratified by the People, May 7, 1879.

PREAMBLE AND DECLARATION OF RIGHTS

PREAMBLE

WE, the people of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.

ARTICLE I

DECLARATION OF RIGHTS

SECTION 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

SEC. 3. The State of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land.

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall for ever be guaranteed in this State; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or the safety of the State.

SEC. 5. The privilege of the writ of habeas corpus shall not be suspended unless when, in case of rebellion or invasion, the public safety may require the suspension.

[1] I take this from an official edition published in 1887, and containing a few amendments made since 1879.

For a reference to some of the more remarkable provisions, see note at end.

SEC. 6. All persons shall be bailable by sufficient sureties unless for capital offences when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishment be inflicted. Witnesses shall not be unreasonably detained, nor confined in any room where criminals are actually imprisoned.

SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions three-fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases, not amounting to felony, by the consent of both parties, expressed in open Court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions, and cases of misdemeanour, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open Court.

SEC. 8. Offences heretofore required to be prosecuted by indictment shall be prosecuted by information, after examination and commitment by a magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law. A grand jury shall be drawn and summoned at least once a year in each county.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. Indictments found, or informations laid, for publication in newspapers, shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libelled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.

SEC. 10. The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances.

SEC. 11. All laws of a general nature shall have a uniform operation.

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace, and no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

SEC. 13. In criminal prosecutions, in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the Court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offence; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law. The Legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than

cases of homicide, when there is reason to believe that the witness, from inability or other causes, will not attend at the trial.

SEC. 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into Court for, the owner, and no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money or ascertained and paid into Court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a Court of record, as shall be prescribed by law.

SEC. 15. No person shall be imprisoned for debt in any civil action, or mesne or final process, unless in case of fraud, nor in civil actions for torts, except in cases of wilful injury to person or property ; and no person shall be imprisoned for a militia fine in time of peace.

SEC. 16. No bill of attainder, *ex post facto* law, or law impairing the obligations of contracts, shall ever be passed.

SEC. 17. Foreigners of the white race or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while *bona fide* residents of this State, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission, and inheritance of property as native born citizens.

SEC. 18. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State.

SEC. 19. The right of the people to be secured in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated ; and no warrant shall issue, but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

SEC. 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open Court.

SEC. 21. No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature, nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

SEC. 22. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

SEC. 23. This enumeration of rights shall not be construed to impair or deny others retained by the people.

SEC. 24. No property qualification shall ever be required for any person to vote or hold office.

ARTICLE II

RIGHT OF SUFFRAGE

SECTION 1. Every native male citizen of the United States, every male person who shall have acquired the rights of citizenship under or

by virtue of the treaty of Queretaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election precinct thirty days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; *provided*, no native of China, no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privilege of an elector in this State.

SEC. 2. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

SEC. 3. No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

SEC. 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State or of the United States, or of the high seas; nor while a student at any seminary of learning; nor while kept in any almshouse or other asylum, at public expense; nor while confined in any public prison.

SEC. 5. All elections by the people shall be by ballot.

ARTICLE III

DISTRIBUTION OF POWERS

SECTION 1. The powers of the Government of the State of California shall be divided into three separate departments—the legislative, executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except as in this Constitution expressly directed or permitted.

ARTICLE IV

LEGISLATIVE DEPARTMENT

SECTION 1. The legislative power of this State shall be vested in a Senate and Assembly, which shall be designated the Legislature of the State of California, and the enacting clause of every law shall be as follows:—"The People of the State of California, represented in Senate and Assembly, do enact as follows."

SEC. 2. The sessions of the Legislature shall commence at twelve o'clock M. on the first Monday after the first day of January next succeeding the election of its members, and, after the election held in the year eighteen hundred and eighty, shall be biennial, unless the Governor shall, in the interim, convene the Legislature by proclamation. No pay

shall be allowed to members for a longer time than sixty days,[1] except for the first session after the adoption of this Constitution, for which they may be allowed pay for one hundred days. And no bill shall be introduced in either house after the expiration of ninety days from the commencement of the first session, nor after fifty days after the commencement of each succeeding session, without the consent of two-thirds of the members thereof.

SEC. 3. Members of the Assembly shall be elected in the year eighteen hundred and seventy-nine, at the time and in the manner now provided by law. The second election of members of the Assembly, after the adoption of this Constitution, shall be on the first Tuesday after the first Monday in November, eighteen hundred and eighty. Thereafter members of the Assembly shall be chosen biennially, and their term of office shall be two years; and each election shall be on the first Tuesday after the first Monday in November, unless otherwise ordered by the Legislature.

SEC. 4. Senators shall be chosen for the term of four years, at the same time and places as members of the Assembly, and no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State three years, and of the district for which he shall be chosen one year, next before his election.

SEC. 5. The Senate shall consist of forty members, and the Assembly of eighty members, to be elected by districts, numbered as hereinafter provided. The seats of the twenty Senators elected in the year eighteen hundred and eighty-two from the odd numbered districts shall be vacated at the expiration of the second year, so that one-half of the Senators shall be elected every two years; *provided*, that all the Senators elected at the first election under this Constitution shall hold office for the term of three years.

SEC. 6. For the purpose of choosing members of the Legislature, the State shall be divided into forty senatorial and eighty assembly districts, as nearly equal in population as may be, and composed of contiguous territory, to be called senatorial and assembly districts. Each senatorial district shall choose one Senator, and each assembly district shall choose one member of Assembly. The senatorial districts shall be numbered from one to forty, inclusive, in numerical order, and the assembly districts shall be numbered from one to eighty, in the same order, commencing at the northern boundary of the State, and ending at the southern boundary thereof. In the formation of such districts no county, or city and county, shall be divided, unless it contains sufficient population within itself to form two or more districts, nor shall a part of any county, or of any city and county, be united with any other county, or city and county, in forming any district. The census taken under the direction of the Congress of the United States in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the legislative districts; and the Legislature shall, at its first session after each census, adjust such districts and reapportion the representation so as to preserve them as near equal in population as

[1] I am informed that this period has by a very recent amendment been extended to 100 days.

may be. But in making such adjustment no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming a part of the population of any district. Until such districting as herein provided for shall be made, Senators and Assemblymen shall be elected by the districts according to the apportionment now provided for by law.

SEC. 7. Each house shall choose its officers, and judge of the qualifications, elections, and returns of its members.

SEC. 8. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

SEC. 9. Each house shall determine the rule of its proceeding, and may, with the concurrence of two-thirds of all its members elected, expel a member.

SEC. 10. Each house shall keep a journal of its proceedings, and publish the same, and the yeas and nays of the members of either house, on any question, shall, at the desire of any three members present, be entered on the Journal.

SEC. 11. Members of the Legislature shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

SEC. 12. When vacancies occur in either house, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

SEC. 13. The doors of each house shall be open, except on such occasion as, in the opinion of the house, may require secrecy.

SEC. 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which they may be sitting. Nor shall the members of either house draw pay for any recess or adjournment for a longer time than three days.

SEC. 15. No law shall be passed except by bill. Nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same be read on three several days in each house, unless, in a case of urgency, two-thirds of the house where such bill may be pending shall, by a vote of yeas and nays, dispense with this provision. Any bill may originate in either house, but may be amended or rejected by the other; and on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the Journal, and no bill shall become a law without the concurrence of a majority of the members elected to each house.

SEC. 16. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, which shall enter such objections upon the

Journal and proceed to reconsider it. If, after such reconsideration, it again pass both houses, by yeas and nays, two-thirds of the members elected to each house voting therefor, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the Governor, within ten days after such adjournment (Sundays excepted), shall sign and deposit the same in the office of the Secretary of State, in which case it shall become a law in like manner as if it had been signed by him before adjournment. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriations so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided. If the Legislature be in session, the Governor shall transmit to the house in which the bill originated, a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor.

SEC. 17. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members elected.

SEC. 18. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, Chief Justice and Associate Justices of the Supreme Court, and Judges of the Superior Courts, shall be liable to impeachment for any misdemeanour in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honour, trust, or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried for misdemeanour in office in such manner as the Legislature may provide.

SEC. 19. No Senator or member of Assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which have been increased, during such term, except such offices as may be filled by election by the people.

SEC. 20. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State; *provided*, that officers in the militia, who receive no annual salary, local officers, or Postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed to hold lucrative offices.

SEC. 21. No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any State, or of any county

or municipality therein, shall ever be eligible to any office of honour, trust, or profit under this State, and the Legislature shall provide, by law, for the punishment of embezzlement or defalcation as a felony.

SEC. 22. No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State Treasury for the use and benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property ever be made thereto by the State; *provided*, that notwithstanding anything contained in this or any other section of this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans or half orphans, or abandoned children, or aged persons in indigent circumstances—such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions; *provided further*, that the State shall have, at any time, the right to inquire into the management of such institution; *provided further*, that whenever any county, or city and county, or city, or town, shall provide for the support of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances, such county, city and county, city, or town, shall be entitled to receive the same *pro rata* appropriations as may be granted to such institutions under church or other control. An accurate statement of the receipts and expenditures of public moneys shall be attached and published with the laws at every regular session of the Legislature.

SEC. 23. The members of the Legislature shall receive for their services a per diem and mileage, to be fixed by law and paid out of the public treasury; such per diem shall not exceed eight dollars, and such mileage shall not exceed ten cents per mile, and for contingent expenses not exceeding twenty-five dollars for each session. No increase in compensation or mileage shall take effect during the term for which the members of either house shall have been elected, and the pay of no attaché shall be increased after he is elected or appointed.

SEC. 24. Every Act shall embrace but one subject, which subject shall be expressed in its title. But if any subject shall be embraced in an Act which shall not be expressed in its title, such Act shall be void only as to so much thereof as shall not be expressed in its title. No law shall be revised or amended by reference to its title; but in such case the Act revised or section amended shall be re-enacted and published at length as revised or amended; and all laws of the State of California, and all official writings, and the executive, legislative, and judicial proceedings shall be conducted, preserved, and published in no other than the English language.

SEC. 25. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:—

First—Regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and of Constables.

Second—For the punishment of crimes and misdemeanours.

Third—Regulating the practice of courts of justice.

Fourth—Providing for changing the venue in civil or criminal actions.

Fifth—Granting divorces.

Sixth—Changing the names of persons or places.

Seventh—Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plots, parks, cemeteries, graveyards, or public grounds not owned by the State.

Eighth—Summoning and impaneling grand and petit juries, and providing for their compensation.

Ninth—Regulating county and township business, or the election of county or township officers.

Tenth—For the assessment or collection of taxes.

Eleventh—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

Twelfth—Affecting estates of deceased persons, minors, or other persons under legal disabilities.

Thirteenth—Extending the time for the collection of taxes.

Fourteenth—Giving effect to invalid deeds, wills, or other instruments.

Fifteenth—Refunding money paid into the State Treasury.

Sixteenth—Releasing, or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein.

Seventeenth—Declaring any person of age, or authorizing any minor to sell, lease, or encumber his or her property.

Eighteenth—Legalizing, except as against the State, the unauthorized or invalid act of any officer.

Nineteenth—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

Twentieth—Exempting property from taxation.

Twenty-first—Changing county seats.

Twenty-second—Restoring to citizenship persons convicted of infamous crimes.

Twenty-third—Regulating the rate of interest on money.

Twenty-fourth—Authorizing the creation, extension, or impairing of liens.

Twenty-fifth—Chartering or licensing ferries, bridges, or roads.

Twenty-sixth—Remitting fines, penalties, or forfeitures.

Twenty-seventh—Providing for the management of common schools.

Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, township, election, or school districts.

Twenty-ninth—Affecting the fees or salary of any officer.

Thirtieth—Changing the law of descent or succession.

Thirty-first—Authorizing the adoption or legitimation of children.

Thirty-second—For limitation of civil or criminal actions.

Thirty-third—In all other cases where a general law can be made applicable.

SEC. 26. The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale in this State of lottery or gift enterprise tickets, or tickets in any scheme in

the nature of a lottery. The Legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange, or stock market under the control of any association. All contracts for the sale of shares of the capital stock of any corporation or association, on margin, or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any Court of competent jurisdiction.

SEC. 27. When a congressional district shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county, or city and county, shall be divided in forming a congressional district so as to attach one portion of a county, or city and county, to another county, or city and county, except in cases where one county, or city and county, has more population than the ratio required for one or more Congressmen; but the Legislature may divide any county, or city and county, into as many congressional districts as it may be entitled to by law. Any county, or city and county, containing a population greater than the number required for one congressional district, shall be formed into one or more congressional districts, according to the population thereof, and any residue, after forming such district or districts, shall be attached by compact adjoining assembly districts, to a contiguous county or counties, and form a congressional district. In dividing a county, or city and county, into congressional districts, no assembly district shall be divided so as to form a part of more than one congressional district, and every such congressional district shall be composed of compact contiguous assembly districts.

SEC. 28. In all elections by the Legislature the members thereof shall vote *viva voce*, and the votes shall be entered on the Journal.

SEC. 29. The general appropriation bill shall contain no item or items of appropriation other than such as are required to pay the salaries of the State officers, and expenses of the government, and of the institutions under the exclusive control and management of the State.

SEC. 30. Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever; *provided*, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article.

SEC. 31. The Legislature shall have no power to give or to lend, or to authorize the giving or lending of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision of the State now existing, or that may be hereafter established,

in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift, or authorize the making of any gift, or any public money or thing of value, to any individual, municipal or other corporation whatever; *provided*, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever.

SEC. 32. The Legislature shall have no power to grant, or authorize any county or municipal authority to grant, any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered, or a contract has been entered into and performed, in whole or in part, nor to pay, or to authorize the payment of, any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

SEC. 33. The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph and gas corporations, and the charges by corporations or individuals for storage and wharfage, in which there is a public use; and where laws shall provide for the selection of any person or officer to regulate or limit such rates, no person or officer shall be selected by any corporation or individual interested in the business to be regulated, and no person shall be selected who is an officer or stockholder in any such corporation.

SEC. 34. No bill making an appropriation for money, except the general appropriation bill, shall contain more than one item of appropriation, and that for one single and certain purpose to be therein expressed.

SEC. 35. Any person who seeks to influence the vote of a member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony; and it shall be the duty of the Legislature to provide, by law, for the punishment of this crime. Any member of the Legislature, who shall be influenced in his vote or action upon any matter pending before the Legislature by any reward, or promise of future reward, shall be deemed guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and for ever disqualified from holding any office of public trust. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offence of bribery or corrupt solicitation, or with having been influenced in his vote or action, as a member of the Legislature, by reward, or promise of future reward, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.

ARTICLE V

EXECUTIVE DEPARTMENT

SECTION 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of California.

SEC. 2. The Governor shall be elected by the qualified electors at the time and place of voting for members of the Assembly, and shall hold his office four years from and after the first Monday after the first day of January subsequent to his election, and until his successor is elected and qualified.

SEC. 3. No person shall be eligible to the office of Governor who has not been a citizen of the United States and a resident of this State five years next preceding his election, and attained the age of twenty-five years at the time of such election.

SEC. 4. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Assembly, who shall, during the first week of the session, open and publish them in the presence of both Houses of the Legislature. The person having the highest number of votes shall be Governor; but, in case any two or more have an equal and the highest number of votes, the Legislature shall, by joint vote of both houses, choose one of such persons having an equal and the highest number of votes for Governor.

SEC. 5. The Governor shall be Commander-in-Chief of the militia, the army, and navy of this State.

SEC. 6. He shall transact all executive business with the officers of government, civil and military, and may require information, in writing, from the officers of the executive department, upon any subject relating to the duties of their respective offices.

SEC. 7. He shall see that all the laws are faithfully executed.

SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and law for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

SEC. 9. He may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he has convened it, and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto.

SEC. 10. He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

SEC. 11. In case of disagreement between the two houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature.

SEC. 12. No person shall, while holding any office under the United

States or this State, exercise the office of Governor except as hereinafter expressly provided.

SEC. 13. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of California."

SEC. 14. All grants and commissions shall be in the name and by the authority of The People of the State of California, sealed with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.

SEC. 15. A Lieutenant-Governor shall be elected at the same time and places, and in the same manner, as the Governor, and his term of office and his qualifications of eligibility shall also be the same. He shall be the President of the Senate, but shall have only a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President *pro tempore* of the Senate shall act as Governor until the vacancy be filled or the disability shall cease. The Lieutenant-Governor shall be disqualified from holding any other office, except as specially provided in this Constitution, during the term for which he shall have been elected.

SEC. 16. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue Commander-in-Chief of all the military force of the State.

SEC. 17. A Secretary of State, a Controller, a Treasurer, an Attorney-General, and a Surveyor-General shall be elected at the same time and places, and in the same manner as the Governor and Lieutenant-Governor, and their terms of office shall be the same as that of the Governor.

SEC. 18. The Secretary of State shall keep a correct record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall perform such other duties as may be assigned him by law.

SEC. 19. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General shall, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected, which compensation is hereby fixed for the following officers for the two terms next ensuing the adoption of this Constitution, as follows:—Governor, six thousand dollars per annum; Lieutenant-Governor, the same per diem as may be provided by law for the Speaker of the Assembly, to be allowed only during the session of the Legislature; the Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General, three thousand dollars each per annum,

such compensation to be in full for all services by them respectively rendered in any official capacity or employment whatsoever during their respective terms of office ; *provided, however*, that the Legislature, after the expiration of the terms hereinbefore mentioned, may by law diminish the compensation of any or all such officers, but in no case shall have the power to increase the same above the sums hereby fixed by this Constitution. No salary shall be authorized by law for clerical service, in any office provided for in this article, exceeding sixteen hundred dollars per annum for each clerk employed. The Legislature may, in its discretion, abolish the office of Surveyor-General, and none of the officers hereinbefore named shall receive for their own use any fees or perquisites for the performance of any official duty.

SEC. 20. The Governor shall not, during his term of office, be elected a senator to the Senate of the United States.

ARTICLE VI

JUDICIAL DEPARTMENT

SECTION 1. The judicial power of the State shall be vested in the Senate sitting as a Court of Impeachment, in a Supreme Court, Superior Courts, Justices of the Peace, and such inferior courts as the Legislature may establish in any incorporated city, or town, or city and county.

SEC. 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The Court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated, respectively, Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time. The Associate Justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by the Chief Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the Court in bank. The presence of three Justices shall be necessary to transact any business in either of the departments, except such as may be done at chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the Court to be heard and decided by the Court in bank. The order may be made before or after judgment pronounced by a department ; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. Any four Justices may, either before or after judgment by a department, order a case to be heard in bank. If the order be not made within the time above limited, the judgment shall be final. No judgment by a

department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the Chief Justice, in writing, with the concurrence of two Associate Justices. The Chief Justice may convene the Court in bank at any time, and shall be the presiding Justice of the Court when so convened. The concurrence of four Justices present at the argument shall be necessary to pronounce a judgment in bank; but if four Justices, so present, do not concur in a judgment, then all the Justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four Judges shall be necessary. In the determination of causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the Justices assigned to each department shall select one of their number as presiding Justice. In case of the absence of the Chief Justice from the place at which the Court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

SEC. 3. The Chief Justice and the Associate Justices shall be elected by the qualified electors of the State at large at the general State elections, at the times and places at which the State officers are elected; and the term of office shall be twelve years, from and after the first Monday after the first day of January next succeeding their election; *provided*, that the six Associate Justices elected at the first election shall, at their first meeting, so classify themselves, by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the Court in bank, signed by them, and a duplicate thereof shall be filed in the office of the Secretary of State. If a vacancy occur in the office of a Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term. The first election of the Justices shall be at the first general election after the adoption and ratification of this Constitution.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity, except such as arise in Justices' Courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also, in cases of forcible entry and detainer, and in proceedings in insolvency, and in actions to prevent or abate a nuisance, and in all such probate matters as may be provided by law; also, in all criminal cases prosecuted by indictment or information in a Court of record on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue

writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any Superior Court in the State, or before any Judge thereof.

SEC. 5. The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanour not otherwise provided for; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of divorce and for annulment of marriage, and of all such special cases of proceedings as are not otherwise provided for. And said Court shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in Justices' and other inferior Courts in their respective counties as may be prescribed by law. They shall always be open (legal holidays and non-judicial days excepted), and their process shall extend to all parts of the State; *provided*, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate, or any part thereof affected by such action or actions, is situated. Said Courts, and their Judges, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

SEC. 6. There shall be in each of the organized counties, or cities and counties, of the State, a Superior Court, for each of which at least one Judge shall be elected by the qualified electors of the county, or city and county, at the general State election; *provided*, that until otherwise ordered by the Legislature, only one Judge shall be elected for the Counties of Yuba and Sutter, and that in the City and County of San Francisco there shall be elected twelve Judges of the Superior Court, any one or more of whom may hold Court. There may be as many sessions of said Court, at the same time, as there are Judges thereof. The said Judges shall choose from their own number a presiding Judge, who may be removed at their pleasure. He shall distribute the business of the Court among the Judges thereof, and prescribe the order of business. The judgments, orders, and proceedings of any session of the Superior Court, held by any one or more of the Judges of said Courts, respectively, shall be equally effectual, as if all the Judges of said respective Courts presided at such session. In each of the Counties of Sacramento, San Joaquin, Los Angeles, Sonoma, Santa Clara, and Alameda there shall be elected two such Judges. The term of office of Judges of the Superior Courts shall be six years from and after the first Monday of January next succeeding their election; *provided*, that the twelve Judges of the Superior Court elected in the City and County of San Francisco, at the first election held under

this Constitution, shall at their first meeting so classify themselves, by lot, that four of them shall go out of office at the end of two years, and four of them shall go out of office at the end of four years, and four of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the Court, signed by them, and a duplicate thereof filed in the office of the Secretary of State. The first election of Judges of the Superior Courts shall take place at the first general election held after the adoption and ratification of this Constitution. If a vacancy occur in the office of Judge of a Superior Court, the Governor shall appoint a person to hold the office until the election and qualification of a Judge to fill the vacancy, which election shall take place at the next succeeding general election, and the Judge so elected shall hold office for the remainder of the unexpired term.

SEC. 7. In any county, or city and county, other than the City and County of San Francisco, in which there shall be more than one Judge of the Superior Court, the Judges of such Court may hold as many sessions of said Court at the same time as there are Judges thereof, and shall apportion the business among themselves as equally as may be.

SEC. 8. A Judge of any Superior Court may hold a Superior Court in any county, at the request of a Judge of the Superior Court thereof, and upon request of the Governor it shall be his duty so to do. But a cause in a Superior Court may be tried by a Judge *pro tempore*, who must be a member of the bar, agreed upon in writing by the parties litigant or their attorneys of record, approved by the Court, and sworn to try the cause.

SEC. 9. The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than sixty consecutive days shall be deemed to have forfeited his office. The Legislature of the State may, at any time, two-thirds of the members of the Senate and two-thirds of the members of the Assembly voting therefor, increase or diminish the number of Judges of the Superior Court in any county, or city and county, in the State; *provided*, that no such reduction shall affect any Judge who has been elected.

SEC. 10. Justices of the Supreme Court and Judges of the Superior Courts may be removed by concurrent resolution of both Houses of the Legislature, adopted by a two-thirds vote of each house. All other judicial officers, except Justices of the Peace, may be removed by the Senate on the recommendation of the Governor, but no removal shall be made by virtue of this section, unless the cause thereof be entered on the Journal, nor unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defence. On the question of removal, the ayes and noes shall be entered on the Journal.

SEC. 11. The Legislature shall determine the number of Justices of the Peace to be elected in townships, incorporated cities and towns, or cities and counties, and shall fix by law the powers, duties, and responsibilities of Justices of the Peace; *provided*, such powers shall not in any case trench upon the jurisdiction of the several Courts of record, except

that said Justices shall have concurrent jurisdiction with the Superior Courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars, and in cases to enforce and foreclose liens on personal property when neither the amount of the liens nor the value of the property amounts to three hundred dollars.

SEC. 12. The Supreme Court, the Superior Courts, and such other Courts as the Legislature may prescribe, shall be Courts of record.

SEC. 13. The Legislature shall fix by law the jurisdiction of any inferior Courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the Judges thereof.

SEC. 14. The Legislature shall provide for the election of a Clerk of the Supreme Court, and shall fix by law his duties and compensation, which compensation shall not be increased or diminished during the term for which he shall have been elected. The County Clerks shall be *ex officio* Clerks of the Courts of record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment, by the several Superior Courts, of one or more Commissioners in their respective counties, or cities and counties, with authority to perform chamber business of the Judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law.

SEC. 15. No judicial officer, except Justices of the Peace and Court Commissioners, shall receive to his own use any fees or perquisites of office.

SEC. 16. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient, and all opinions shall be free for publication by any person.

SEC. 17. The Justices of the Supreme Court and Judges of the Superior Courts shall severally, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished after their election, nor during the term for which they shall have been elected. The salaries of the Justices of the Supreme Court shall be paid by the State. One-half of the salary of each Superior Court Judge shall be paid by the State; the other half thereof shall be paid by the county for which he is elected. During the term of the first Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each. Until otherwise changed by the Legislature, the Superior Court Judges shall receive an annual salary of three thousand dollars each, payable monthly, except the Judges of the City and County of San Francisco, and the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Yuba and Sutter combined, Sacramento, Butte, Nevada, and Sonoma, who shall receive four thousand dollars each.

SEC. 18. The Justices of the Supreme Court and Judges of the Superior Courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

SEC. 19. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

SEC. 20. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

SEC. 21. The Justices shall appoint a Reporter of the decisions of the Supreme Court, who shall hold his office and be removable at their pleasure. He shall receive an annual salary not to exceed twenty-five hundred dollars, payable monthly.

SEC. 22. No Judge of a Court of record shall practise law in any Court of this State during his continuance in office.

SEC. 23. No one shall be eligible to the office of Justice of the Supreme Court, or to the office of Judge of a Superior Court, unless he shall have been admitted to practise before the Supreme Court of the State.

SEC. 24. No Judge of a Superior Court, nor of the Supreme Court, shall, after the first day of July one thousand eight hundred and eighty, be allowed to draw or receive any monthly salary unless he shall take and subscribe to an affidavit before an officer entitled to administer oaths, that no cause in his Court remains undecided that has been submitted for decision for the period of ninety days.

ARTICLE VII

PARDONING POWER

SECTION 1. The Governor shall have the power to grant reprieves, pardons, and commutations of sentence, after conviction, for all offences except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. The Governor shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime for which he was convicted, the sentence, its date, the date of the pardon or reprieve, and the reasons for granting the same. Neither the Governor nor the Legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been twice convicted of felony, unless upon the written recommendation of a majority of the Judges of the Supreme Court.

ARTICLE VIII

MILITIA

SECTION 1. The Legislature shall provide, by law, for organizing and disciplining the militia, in such manner as it may deem expedient, not

incompatible with the Constitution and laws of the United States. Officers of the militia shall be elected or appointed in such manner as the Legislature shall, from time to time, direct, and shall be commissioned by the Governor. The Governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and repel invasions.

SEC. 2. All military organizations provided for by this Constitution, or any law of this State, and receiving State support, shall, while under arms, either for ceremony or duty, carry no device, banner, or flag of any State or nation, except that of the United States or the State of California.

ARTICLE IX

EDUCATION

SECTION 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

SEC. 2. A Superintendent of Public Instruction shall, at each gubernatorial election after the adoption of this Constitution, be elected by the qualified electors of the State. He shall receive a salary equal to that of the Secretary of State, and shall enter upon the duties of his office on the first Monday after the first day of January next succeeding his election.

SEC. 3. A Superintendent of Schools for each county shall be elected by the qualified electors thereof at each gubernatorial election; *provided*, that the Legislature may authorize two or more counties to unite and elect one Superintendent for the counties so uniting.

SEC. 4. The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools, which may be, or may have been, sold or disposed of, and the five hundred thousand acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A.D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent as may be granted, or may have been granted, by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

SEC. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

SEC. 6. The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools, as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School

Fund, and the State school tax, shall be applied exclusively to the support of primary and grammar schools.

SEC. 7. The Governor, Superintendent of Public Instruction, and the Principals of the State Normal Schools, shall constitute the State Board of Education, and shall compile, or cause to be compiled, and adopt a uniform series of text-books for use in the common schools throughout the State. The State Board may cause such text-books, when adopted, to be printed and published by the Superintendent of State Printing, at the State Printing Office, and when so printed and published, to be distributed and sold at the cost price of printing, publishing, and distributing the same. The text-books so adopted shall continue in use not less than four years ; and said State Board shall perform such other duties as may be prescribed by law. The Legislature shall provide for a Board of Education in each county in the State. The County Superintendents and the County Boards of Education shall have control of the examination of teachers and the granting of teachers' certificates within their respective jurisdictions. [Amendment adopted November 4, 1884.]

SEC. 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools ; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

SEC. 9. The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in the form and character prescribed by the organic Act creating the same, passed March twenty-third, eighteen hundred and sixty-eight (and the several Acts amendatory thereof), subject only to such legislative control as may be necessary to ensure compliance with the terms of its endowments and the proper investment and security of its funds. It shall be entirely independent of all political or sectarian influence, and kept free therefrom in the appointment of its Regents, and in the administration of its affairs; *provided*, that all the moneys derived from the sale of the public lands donated to this State by Act of Congress, approved July second, eighteen hundred and sixty-two (and the several Acts amendatory thereof), shall be invested as provided by said Acts of Congress, and the interest of said moneys shall be inviolably appropriated to the endowment, support, and maintenance of at least one College of Agriculture, where the leading objects shall be (without excluding other scientific and classical studies, and including military tactics) to teach such branches of learning as are related to scientific and practical agriculture and the mechanic arts, in accordance with the requirements and conditions of said Acts of Congr[illegible] the Legislature shall provide that if, through neglect, misap[illegible]n, or any other contingency, any portion of the funds so se[illegible]inished or lost, the State shall replace such portion so [illegible]iated, so that the principal thereof shall remain fo[illegible] No person shall be debarred admission to any of [illegible]nts of the University on account of sex.

ARTICLE X

STATE INSTITUTIONS AND PUBLIC BUILDINGS

SECTION 1. There shall be a State Board of Prison Directors, to consist of five persons, to be appointed by the Governor, with the advice and consent of the Senate, who shall hold office for ten years, except that the first appointed shall, in such manner as the Legislature may direct, be so classified that the term of one person so appointed shall expire at the end of each two years during the first ten years, and vacancies occurring shall be filled in like manner. The appointee to a vacancy, occurring before the expiration of a term, shall hold office only for the unexpired term of his predecessor. The Governor shall have the power to remove either of the Directors for misconduct, incompetency, or neglect of duty, after an opportunity to be heard upon written charges.

SEC. 2. The Board of Directors shall have the charge and superintendence of the State Prisons, and shall possess such powers and perform such duties, in respect to other penal and reformatory institutions of the State, as the Legislature may prescribe.

SEC. 3. The Board shall appoint the Warden and Clerk, and determine the other necessary officers of the prisons. The Board shall have power to remove the Wardens and Clerks for misconduct, incompetency, or neglect of duty. All other officers and employés of the prisons shall be appointed by the Warden thereof, and be removed at his pleasure.

SEC. 4. The members of the Board shall receive no compensation, other than reasonable travelling and other expenses incurred while engaged in the performance of official duties, to be audited as the Legislature may direct.

SEC. 5. The Legislature shall pass such laws as may be necessary to further define and regulate the powers and duties of the Board, Wardens, and Clerks, and to carry into effect the provisions of this article.

SEC. 6. After the first day of January, eighteen hundred and eighty-two, the labour of convicts shall not be let out by contract to any person, copartnership, company, or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the State.

ARTICLE XI

CITIES, COUNTIES, AND TOWNS

SECTION 1. The several counties, as they now exist, are hereby recognized as legal subdivisions of this State.

SEC. 2. No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favour of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

SEC. 3. No new county shall be established which shall reduce any county to a population of less than eight thousand; nor shall a new county be formed containing a less population than five thousand, nor shall any line thereof pass within five miles of the county seat of any

county proposed to be divided. Every county which shall be enlarged or created from territory taken from any other county or counties, shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken.

SEC. 4. The Legislature shall establish a system of county governments which shall be uniform throughout the State, and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county, voting at a general election, shall so determine; and whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made and the business of such county and the local affairs of the several townships therein shall be managed and transacted in the manner prescribed by such general laws.

SEC. 5. The Legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of Boards of Supervisors, Sheriffs, County Clerks, District Attorneys, and such other county, township, and municipal officers as public convenience may require, and shall prescribe their duties, and fix their term of office. It shall regulate the compensation of all such officers in proportion to duties, and for this purpose may classify the counties by population; and it shall provide for the strict accountability of county and township officers for all fees which may be collected by them, and for all public and municipal money which may be paid to them, or officially come into their possession.

SEC. 6. Corporations for municipal purposes shall not be created by special laws; but the Legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed. Cities and towns heretofore organized or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution, shall be subject to and controlled by general laws.

SEC. 7. City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this Constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or not prohibited to cities, shall be applicable to such consolidated government. In consolidated city and county governments, of more than one hundred thousand population, there shall be two Boards of Supervisors or houses of legislation—one of which, to consist of twelve persons, shall be elected by general ticket from the city and county at large, and shall hold office for the term of four years, but shall be so classified that after the first election only six shall be elected every two years; the other, to consist of twelve persons, shall be elected every two years, and shall hold office for the term of two years. Any vacancy occurring in the office of Supervisor, in either Board, shall be filled by the Mayor or other chief executive officer.

SEC. 8. Any city containing a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a Board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of such city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such Board, or a majority of them, and returned, one copy thereof to the Mayor, or other chief executive officer of such city, and the other to the Recorder of deeds of the county. Such proposed charter shall then be published in two daily papers of general circulation in such city for at least twenty days, and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the Legislature for its approval or rejection as a whole, without power of alteration or amendment, and if approved by a majority vote of the members elected to each house, it shall become the charter of such city, or if such city be consolidated with a county, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the Mayor or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors and its ratification by them, shall be made in duplicate and deposited, one in the office of the Secretary of State, the other, after being recorded in the office of the Recorder of deeds of the county, among the archives of the city; all Courts shall take judicial notice thereof. The charter so ratified may be amended at intervals of not less than two years, by proposals therefor, submitted by legislative authority of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three-fifths of the qualified electors voting thereat, and approved by the Legislature as herein provided for the approval of the charter. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. Any city containing a population of more than ten thousand and not more than one hundred thousand inhabitants, may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a Board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of said city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such Board, or a majority of them, and returned, one copy thereof to the Mayor, or other chief executive of said city, and the other to the Recorder of the county. Such proposed charter shall then be published in two daily papers of general circulation

in such city, for at least twenty days; and the first publication shall be made within twenty days after the completion of the charter; and within not less than thirty days after such publication it shall be submitted to the qualified electors of said city, at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the Legislature for its approval or rejection as a whole, without power of alteration or amendment; and if approved by a majority vote of the members elected to each house it shall become the charter of such city, and the organic law thereof, and shall supersede any existing charter, and any amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the Mayor or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors, and its ratification by them, shall be made in duplicate, and deposited, one in the office of Secretary of State, and the other, after being recorded in said Recorder's office, shall be deposited in the archives of the city; and thereafter all Courts shall take judicial notice of said charter. The charter so ratified may be amended, at intervals of not less than two years, by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three-fifths of the qualified electors voting thereat, and approved by the Legislature as herein provided for the approval of the charter. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. [Amendment adopted April 12, 1887.]

SEC. 9. The compensation of any county, city, town, or municipal officer shall not be increased after his election or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.

SEC. 10. No county, city, town, or other public or municipal corporation, nor the inhabitants thereof, nor the property therein, shall be released or discharged from its or their proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

SEC. 11. Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.

SEC. 12. The Legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

SEC. 13. The Legislature shall not delegate to any special commission, private corporation, company, association, or individual, any power to make, control, appropriate, supervise, or in any way interfere with, any county, city, town, or municipal improvement, money, property, or effects,

whether held in trust or otherwise, or to levy taxes or assessments, or perform any municipal functions whatever.

SEC. 14. No State office shall be continued or created in any county, city, town, or other municipality, for the inspection, measurement, or graduation of any merchandise, manufacture, or commodity; but such county, city, town, or municipality may, when authorized by general law, appoint such officers.

SEC. 15. Private property shall not be taken or sold for the payment of the corporate debt of any political or municipal corporation.

SEC. 16. All moneys, assessments, and taxes belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall immediately be deposited with the Treasurer, or other legal depositary, to the credit of such city, town, or other corporation respectively, for the benefit of the funds to which they respectively belong.

SEC. 17. The making of profit out of county, city, town, or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

SEC. 18. No county, city, town, township, Board of Education, or school district shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void.

SEC. 19. In any city where there are no public works owned and controlled by the municipality for supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose under and by authority of the laws of this State, shall, under the direction of the Superintendent of Streets, or other officer in control thereof, and under such general regulations as the municipality may prescribe for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof. [Amendment adopted November 4, 1884.]

ARTICLE XII

CORPORATIONS

SECTION 1. Corporations may be formed under general laws, but shall not be created by special Act. All laws now in force in this State concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time or repealed.

SEC. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

SEC. 3. Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred, during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or association. The directors or trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint-stock association, during the term of such director or trustee.

SEC. 4. The term corporations, as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships, and all corporations shall have the right to sue and shall be subject to be sued, in all Courts, in like cases as natural persons.

SEC. 5. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but corporations or associations may be formed for such purposes under general laws. No corporation, association, or individual shall issue or put into circulation, as money, anything but the lawful money of the United States.

SEC. 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and *bona fide* organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

SEC. 7. The Legislature shall not extend any franchise or charter nor remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this State.

SEC. 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the Legislature from taking the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals, and the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general well-being of the State.

SEC. 9. No corporation shall engage in any business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized; nor shall it hold for a longer period than five years any real estate except such as may be necessary for carrying on its business.

SEC. 10. The Legislature shall not pass any laws permitting the

leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

SEC. 11. No corporation shall issue stock or bonds, except for money paid, labour done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, at a meeting called for that purpose, giving sixty days' public notice, as may be provided by law.

SEC. 12. In all elections for directors or managers of corporations every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he may think fit; and such directors or managers shall not be elected in any other manner, except that members of co-operative societies formed for agricultural, mercantile, and manufacturing purposes may vote on all questions affecting such societies in manner prescribed by law.

SEC. 13. The State shall not in any manner loan its credit, nor shall it subscribe to or be interested in the stock of any company, association, or corporation.

SEC. 14. Every corporation, other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept for inspection, by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

SEC. 15. No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favourable conditions than are prescribed by law to similar corporations organized under the laws of this State.

SEC. 16. A corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises, or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the Court to change the place of trial as in other cases.

SEC. 17. All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose, under the laws of this State, shall have the right to connect at the State line with railroads of other States. Every railroad company shall have the right with its

road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination.

SEC. 18. No president, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, nor in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company, except such interest in the business of transportation as lawfully flows from the ownership of stock therein.

SEC. 19. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honour, trust, or profit in this State; and the acceptance of any such pass or ticket by a member of the Legislature or any public officer, other than Railroad Commissioner, shall work a forfeiture of his office.

SEC. 20. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying. And whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such standard without the consent of the governmental authority in which shall be vested the power to regulate fares and freights.

SEC. 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.

SEC. 22. The State will be divided into three districts as nearly equal in population as practicable, in each of which one Railroad Commissioner shall be elected by the qualified electors thereof at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years, commencing on the first Monday after the first day of January next succeeding their election. Said Commissioners shall be qualified electors of this State and of the district from which they are elected, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé; and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such

changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have power to issue subpœnas and all other necessary process; to hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes, in the same manner and to the same extent as Courts of record, and enforce their decisions and correct abuses through the medium of the Courts. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by such Commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the Commission, shall be fined not exceeding twenty thousand dollars for each offence; and every officer, agent, or employé of any such corporation or company, who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or be imprisoned in the county jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commission shall be deemed conclusively just and reasonable, and in any action against such corporation or company for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. Said Commission shall report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture of charter or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing section. The Legislature shall have power, by a two-thirds vote of all the members elected to each house, to remove any one or more of said Commissioners from office, for dereliction of duty, or corruption, or incompetency; and whenever, from any cause, a vacancy in office shall occur in said Commission, the Governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified.

SEC. 23. Until the Legislature shall district the State, the following shall be the railroad districts:—The First District shall be composed of the Counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Humboldt, Lake Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba, from which one Railroad Commissioner shall be elected. The Second District shall be composed of the Counties of Marin, San Francisco, and San Mateo, from which one Railroad Commissioner shall be elected. The Third District shall be composed of the counties of Alameda, Contra Costa, Fresno, Inyo, Kern, Los

Angeles, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura, from which one Railroad Commissioner shall be elected.

SEC. 24. The Legislature shall pass all laws necessary for the enforcement of the provisions of this article.

ARTICLE XIII

REVENUE AND TAXATION

SECTION 1. All property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word "property," as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership; *provided*, that growing crops, property used exclusively for public schools, and such as may belong to the United States, this State, or to any county or municipal corporation within this State, shall be exempt from taxation. The Legislature may provide, except in case of credits secured by mortgage or trust deed, for a reduction from credits of debts due *bona fide* residents of this State.

SEC. 2. Land, and the improvements thereon, shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value.

SEC. 3. Every tract of land containing more than six hundred and forty acres, and which has been sectionized by the United States Government, shall be assessed, for the purposes of taxation, by sections or fractions of sections. The Legislature shall provide by law for the assessment, in small tracts, of all lands not sectionized by the United States Government.

SEC. 4. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purpose of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi-public corporations, in case of debt so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment, a full discharge thereof; *provided*, that if any such security or indebtedness shall be paid by such debtor or debtors, after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy of the preceding year.

SEC. 5. Every contract hereafter made, by which a debtor is obligated

to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void.

SEC. 6. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party.

SEC. 7. The Legislature shall have the power to provide by law for the payment of all taxes on real property by instalments.

SEC. 8. The Legislature shall by law require each taxpayer in this State to make and deliver to the County Assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian on the first Monday of March.

SEC. 9. A State Board of Equalization, consisting of one member from each Congressional District in this State, as the same existed in eighteen hundred and seventy-nine, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year one thousand eight hundred and eighty-six, and at each gubernatorial election thereafter, whose term of office shall be for four years; whose duty it shall be to equalize the valuation of the taxable property in the several counties of the State for the purposes of taxation. The Controller of State shall be *ex officio* a member of the Board. The Boards of Supervisors of the several counties of the State shall constitute Boards of Equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; *provided*, such State and County Boards of Equalization are hereby authorized and empowered, under such rules of notice as the County Boards may prescribe as to the action of the State Board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll; *provided*, that no Board of Equalization shall raise any mortgage, deed of trust, contract, or other obligation by which a debt is secured, money, or solvent credits, above its face value. The present State Board of Equalization shall continue in office until their successors, as herein provided for, shall be elected and shall qualify. The Legislature shall have power to redistrict the State into four districts, as nearly equal in population as practical, and to provide for the elections of members of said Board of Equalization. [Amendment, adopted November 4, 1884.]

SEC. 10. All property, except as hereinafter in this section provided, shall be assessed in the county, city, city and county, town, township, or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this State shall be assessed by the State Board of Equalization at their actual value, and the same shall be apportioned to the counties, cities and counties, cities, towns, townships, and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities and counties, cities, towns, townships, and districts.

SEC. 11. Income taxes may be assessed to and collected from persons, corporations, joint stock associations, or companies resident or doing business in this State, or any one or more of them, in such cases and amounts and in such manner, as shall be prescribed by law.

SEC. 12. The Legislature shall provide for the levy and collection of an annual poll tax of not less than two dollars, on every male inhabitant of this State over twenty-one and under sixty years of age, except paupers, idiots, insane persons, and Indians not taxed. Said tax shall be paid into the State School Fund.

SEC. 13. The Legislature shall pass all laws necessary to carry out the provisions of this article.

ARTICLE XIV

WATER AND WATER RIGHTS

SECTION 1. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law; *provided*, that the rates or compensation to be collected by any person, company, or corporation in this State, for the use of water supplied to any city and county, or city, or town, or the inhabitants thereof, shall be fixed, annually, by the Board of Supervisors, or City and County, or City or Town Council, or other governing body of such city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any Board or body failing to pass the necessary ordinances or resolutions fixing water rates, where necessary, within such time, shall be subject to peremptory process to compel action at the suit of any party interested, and shall be liable to such further processes and penalties as the Legislature may prescribe. Any person, company, or corporation collecting water rates in any city and county, or city or town in this State, otherwise than as so established, shall forfeit the franchises and waterworks of such person, company, or corporation to the city and county, or city or town, where the same are collected, for the public use.

SEC. 2. The right to collect rates or compensate for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law.

ARTICLE XV

HARBOUR FRONTAGES, ETC.

SECTION 1. The right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State.

SEC. 2. No individual, partnership, or corporation, claiming or possess-

ing the frontage or tidal lands of a harbour, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

SEC. 3. All tide lands within two miles of any incorporated city or town of this State and fronting on the waters of any harbour, estuary, bay, or inlet, used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations.

ARTICLE XVI

STATE INDEBTEDNESS

SECTION 1. The Legislature shall not, in any manner, create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war to repel invasion or suppress insurrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years of the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, or city and county, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people. The Legislature may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same.

ARTICLE XVII

LAND AND HOMESTEAD EXEMPTION

SECTION 1. The Legislature shall protect, by law, from forced sale, a certain portion of the homestead and other property of all heads of families.

SEC. 2. The holding of large tracts of land, uncultivated and unimproved, by individuals or corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property.

SEC. 3. Lands belonging to this State, which are suitable for cultiva-

tion, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law.

ARTICLE XVIII

AMENDING AND REVISING THE CONSTITUTION

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if two-thirds of all the members elected to each of the two houses shall vote in favour thereof, such proposed amendment or amendments shall be entered in their Journals, with the yeas and nays taken thereon ; and it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people in such manner, and at such time, and after such publication as may be deemed expedient. Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted on separately. If the people shall approve and ratify such amendment or amendments, or any of them, by a majority of the qualified electors voting thereon, such amendment or amendments shall become a part of this Constitution.

SEC. 2. Whenever two-thirds of the members elected to each branch of the Legislature shall deem it necessary to revise this Constitution, they shall recommend to the electors to vote at the next general election for or against a Convention for that purpose, and if a majority of the electors voting at such election on the proposition for a Convention shall vote in favour thereof, the Legislature shall, at its next session, provide by law for calling the same. The Convention shall consist of a number of delegates not to exceed that of both branches of the Legislature, who shall be chosen in the same manner, and have the same qualifications, as members of the Legislature. The delegates so elected shall meet within three months after their election, at such place as the Legislature may direct. At a special election to be provided for by law, the Constitution that may be agreed upon by such Convention shall be submitted to the people for their ratification or rejection, in such manner as the Convention may determine. The returns of such elections shall, in such manner as the Convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the returns so certified to him ; and it shall be the duty of the Executive to declare, by his proclamation, such Constitution as may have been ratified by a majority of all the votes cast at such special election, to be the Constitution of the State of California.

ARTICLE XIX

CHINESE

SECTION 1. The Legislature shall prescribe all necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens who are or

may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and from aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and provide the means and mode of their removal from the State, upon failure and refusal to comply with such conditions ; *provided*, that nothing contained in this section shall be construed to impair or limit the power of the Legislature to pass such police laws or other regulations as it may deem necessary.

SEC. 2. No corporation now existing or hereafter formed under the laws of this State, shall, after the adoption of this Constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The Legislature shall pass such laws as may be necessary to enforce this provision.

SEC. 3. No Chinese shall be employed on any State, county, municipal, or other public work, except in punishment for crime.

SEC. 4. The presence of foreigners ineligible to become citizens of the United States is declared to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. Asiatic coolieism is a form of human slavery, and is for ever prohibited in this State, and all contracts for coolie labour shall be void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labour, shall be subject to such penalties as the Legislature may prescribe. The Legislature shall delegate all necessary power to the incorporated cities and towns of this State for the removal of Chinese without the limits of such cities and towns, or for their location within prescribed portions of those limits, and it shall also provide the necessary legislation to prohibit the introduction into this State of Chinese after the adoption of the Constitution. This section shall be enforced by appropriate legislation.

ARTICLE XX

MISCELLANEOUS SUBJECTS

SECTION 1. The City of Sacramento is hereby declared to be the seat of government of this State, and shall so remain until changed by law ; but no law changing the seat of government shall be valid or binding unless the same be approved and ratified by a majority of the qualified electors of the State voting therefor at a general State election, under such regulations and provisions as the Legislature, by a two-thirds vote of each house, may provide, submitting the question of change to the people.

SEC. 2. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage under this Constitution.

SEC. 3. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation :

"I do solemnly swear (or affirm, as the case may be), that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of ——— according to the best of my ability."

And no other oath, declaration, or test shall be required as a qualification for any office of public trust.

SEC. 4. All officers or Commissioners whose election or appointment is not provided for by this Constitution, and all officers or Commissioners whose offices or duties may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

SEC. 5. The fiscal year shall commence on the first day of July.

SEC. 6. Suits may be brought against the State in such manner and in such Courts as shall be directed by law.

SEC. 7. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

SEC. 8. All property, real and personal, owned by either husband or wife, before marriage, and that acquired by either of them afterward by gift, devise, or descent, shall be their separate property.

SEC. 9. No perpetuities shall be allowed except for eleemosynary purposes.

SEC. 10. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

SEC. 11. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 12. Absence from the State, on business of the State, or of the United States, shall not affect the question of residence of any person.

SEC. 13. A plurality of the votes given at any election shall constitute a choice, where otherwise not directed in this Constitution.

SEC. 14. The Legislature shall provide, by law, for the maintenance and efficiency of a State Board of Health.

SEC. 15. Mechanics, material-men, artisans, and labourers of every class shall have a lien upon the property upon which they have bestowed labour or furnished material, for the value of such labour done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.

SEC. 16. When the term of any officer or Commissioner is not provided for in this Constitution, the term of such officer or Commissioner may be declared by law; and, if not so declared, such officer or Commissioner shall hold his position as such officer or Commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years.

SEC. 17. Eight hours shall constitute a legal day's work on all public work.

SEC. 18. No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession.

SEC. 19. Nothing in this Constitution shall prevent the Legislature from providing, by law, for the payment of the expenses of the Convention framing this Constitution, including the per diem of the delegates for the full term thereof.

SEC. 20. Elections of the officers provided for by this Constitution, except at the election in the year eighteen hundred and seventy-nine, shall be held on the even numbered years next before the expiration of their respective terms. The terms of such officers shall commence on the first Monday after the first day of January next following their election.

ARTICLE XXI

BOUNDARY

SECTION 1. The boundary of the State of California shall be as follows: Commencing at the point of intersection of the forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred and twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line, in a south-easterly direction, to the River Colorado, at a point where it intersects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence running west and along said boundary line to the Pacific Ocean, and extending therein three English miles; thence running in a north-westerly direction, and following the direction of the Pacific Coast to the forty-second degree of north latitude; thence on the line of said forty-second degree of north latitude to the place of beginning. Also including all the islands, harbours, and bays along and adjacent to the coast.

ARTICLE XXII

SCHEDULE

That no inconvenience may arise from the alterations and amendments in the Constitution of this State, and to carry the same into complete effect, it is hereby ordered and declared:

SECTION 1. That all laws in force at the adoption of this Constitution, not inconsistent therewith, shall remain in full force and effect until altered or repealed by the Legislature; and all rights, actions, prosecutions, claims, and contracts of the State, counties, individuals, bodies corporate, not inconsistent therewith, shall continue to be as valid as if this Constitution had not been adopted. The provisions of all laws which are inconsistent with this Constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of this Constitution as require legislation to enforce them shall remain in

full force until the first day of July, eighteen hundred and eighty, unless sooner altered or repealed by the Legislature.

SEC. 2. That all recognizances, obligations, and all other instruments entered into or executed before the adoption of this Constitution, to this State, or to any subdivision thereof, or any municipality therein, and all fines, taxes, penalties, and forfeitures due or owing to this State, or any subdivision or municipality thereof, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments or informations which shall have been found, or may hereafter be found, for any crime or offence committed before this Constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this Constitution.

SEC. 3. All Courts now existing, save Justices' and Police Courts, are hereby abolished; and all records, books, papers, and proceedings from such Courts, as are abolished by this Constitution, shall be transferred, on the first day of January, eighteen hundred and eighty, to the Courts provided for in this Constitution; and the Courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in the first instance commenced, filed, or lodged therein.

SEC. 4. The Superintendent of Printing of the State of California shall, at least thirty days before the first Wednesday in May, A.D. eighteen hundred and seventy-nine, cause to be printed at the State Printing Office, in pamphlet form, simply stitched, as many copies of this Constitution as there are registered voters in this State, and mail one copy thereof to the Post-Office address of each registered voter; *provided*, any copies not called for ten days after reaching their delivery office, shall be subject to general distribution by the several Postmasters of this State. The Governor shall issue his proclamation, giving notice of the election for the adoption or rejection of this Constitution, at least thirty days before the said first Wednesday of May, eighteen hundred and seventy-nine, and the Boards of Supervisors of the several counties shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given at least fifteen days before said election.

SEC. 5. The Superintendent of Printing of the State of California shall, at least twenty days before said election, cause to be printed and delivered to the Clerk of each county in this State five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon, "For the New Constitution." He shall likewise cause to be so printed and delivered to said Clerks five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon, "Against the New Constitution." The Secretary of State is hereby authorized and required to furnish the Superintendent of State Printing a sufficient quantity of legal ballot paper, now on hand, to carry out the provisions of this section.

SEC. 6. The Clerks of the several counties in the State shall, at least five days before said election, cause to be delivered to the Inspectors of Election, at each election precinct or polling place in their respective

counties, suitable registers, poll-books, forms of return, and an equal number of the aforesaid ballots, which number, in the aggregate, must be ten times greater than the number of voters in the said election precincts or polling places. The return of the number of votes cast at the Presidential election in the year eighteen hundred and seventy-six shall serve as a basis of calculation for this and the preceding section; *provided*, that the duties in this and the preceding section imposed upon the Clerks of the respective counties shall, in the City and County of San Francisco, be performed by the Registrar of voters for said city and county.

SEC. 7. Every citizen of the United States, entitled by law to vote for members of the Assembly in this State, shall be entitled to vote for the adoption or rejection of this Constitution.

SEC. 8. The officers of the several counties of this State, whose duty it is, under the law, to receive and canvass the returns from the several precincts of their respective counties, as well as of the City and County of San Francisco, shall meet at the usual place of meeting for such purposes on the first Monday after said election. If, at the time of meeting, the returns from each precinct in the county in which the polls were opened have been received, the Board must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from time to time until all the returns are received, or until the second Monday after said election, when they shall proceed to make out returns of the votes cast for and against the new Constitution; and the proceedings of said Boards shall be the same as those prescribed for like Boards in the case of an election for Governor. Upon the completion of said canvass and returns, the said Board shall immediately certify the same, in the usual form, to the Governor of the State of California.

SEC. 9. The Governor of the State of California shall, as soon as the returns of said election shall be received by him, or within thirty days after said election, in the presence and with the assistance of the Controller, Treasurer, and Secretary of State, open and compute all the returns received of votes cast for and against the new Constitution. If, by such examination and computation, it is ascertained that a majority of the whole number of votes cast at such election is in favour of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California, and that it shall take effect and be in force on the days hereinafter specified.

SEC. 10. In order that future elections in this State shall conform to the requirements of the Constitution, the terms of all officers elected at the first election under the same, shall be, respectively, one year shorter than the terms as fixed by law or by this Constitution; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen, after the adoption of this Constitution, shall be elected at the time and in the manner now provided by law. Judicial officers and the Superintendent of Public Instruction shall be elected at the time and in the manner that State officers are elected.

SEC. 11. All laws relative to the present judicial system of the State shall be applicable to the judicial system created by this Constitution until changed by legislation.

SEC. 12. This Constitution shall take effect and be in force on and after the fourth day of July, eighteen hundred and seventy-nine, at twelve o'clock meridian, so far as the same relates to the election of all officers, the commencement of their terms of office, and the meeting of the Legislature. In all other respects, and for all other purposes, this Constitution shall take effect on the first day of January, eighteen hundred and eighty, at twelve o'clock meridian.

J. P. HOGE, *President.*

Attest: EDWIN F. SMITH, *Secretary.*

[The European reader may be recommended, if he wants the patience to read through the whole of this Constitution, to look at the following parts of it: Arts. i., iv. §§ 2, 15, 16, 24-26, 30-35; vi. §§ 10, 11, 19, 24; ix., xi. §§ 8, 18; xii., xiii., xvi., xvii., xix., xx. §§ 2, 8, 15, 17-19.]

END OF VOL. II

Printed by R. & R. CLARK, *Edinburgh.*